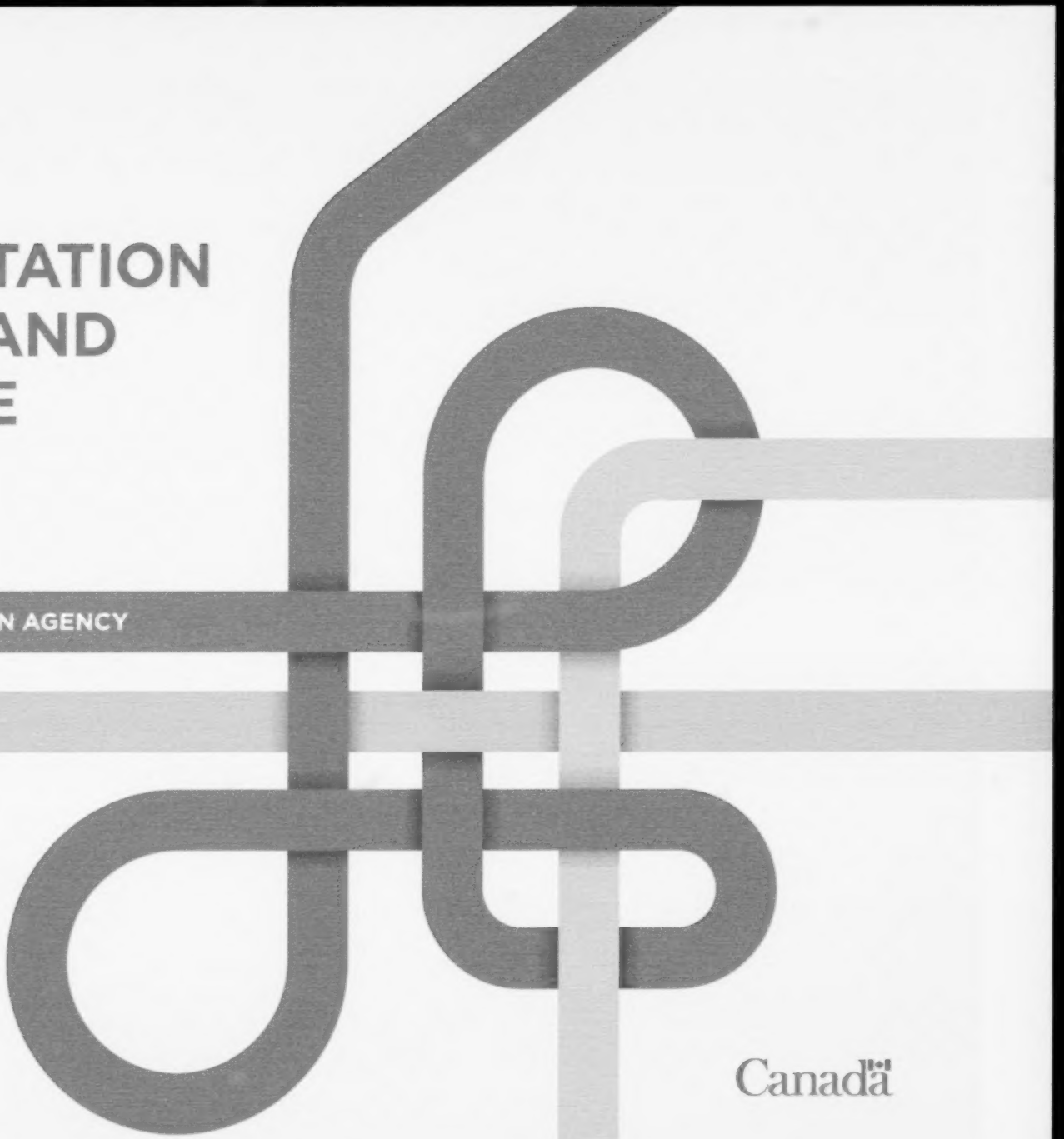
MAKING TRANSPORTATION EFFICIENT AND ACCESSIBLE FOR ALL

CANADIAN TRANSPORTATION AGENCY

ANNUAL REPORT 2012-2013



Canadian Transportation Agency
Office des transports du Canada

Canada

This document and other Canadian Transportation Agency publications are available on our website at **cta.gc.ca**.

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MAY 2013

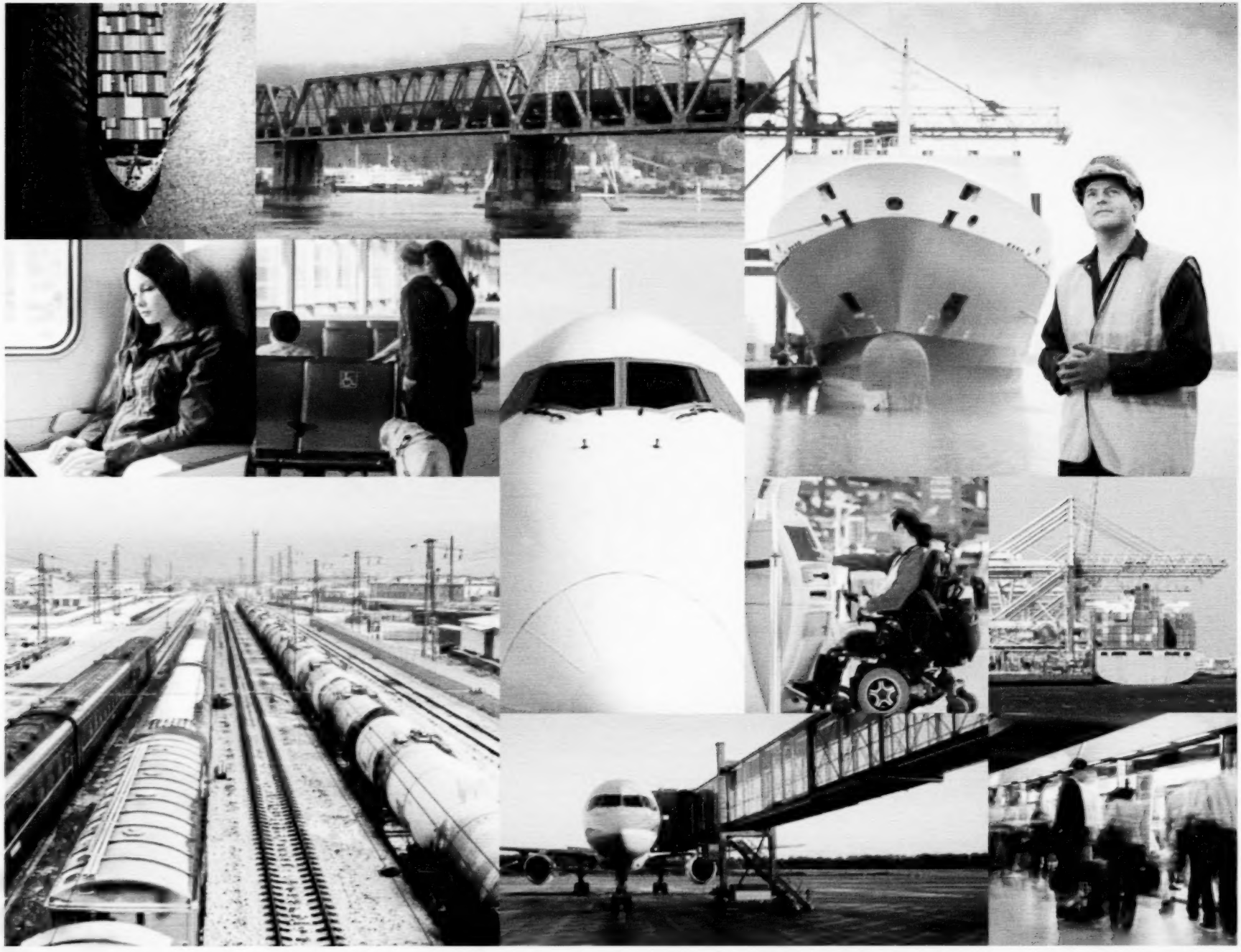
The Honourable Denis Lebel, P.C., M.P.
Minister of Transport
Tower C – Place de Ville 330 Sparks Street Ottawa, ON K1A 0N5

Dear Minister:

Pursuant to section 42 of the *Canada Transportation Act*, I have the honour to present to you the Annual Report of the Canadian Transportation Agency for the period 2012-2013, including the Agency's assessment of the operation of the Act and any difficulties observed in its administration.

Yours sincerely,

Geoff Hare
Chair and Chief Executive Officer



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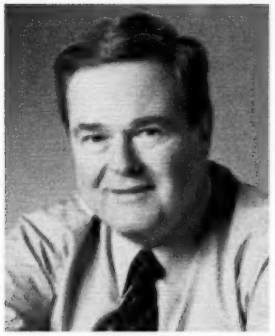
MESSAGE FROM THE CHAIR AND CEO



STAYING FOCUSED ON WHAT MATTERS

As we wrap up the second year of our 2011-2014 Strategic Plan, I am pleased to report that we have made significant progress on reaching our strategic objectives. This would not have been possible without the dedication and hard work of everyone here at the Agency.

By focusing on what matters, the Agency has successfully delivered on its existing duties and service commitments and met the challenges associated with new responsibilities.

Getting the job done

We continue to have an outstanding track record of quality service. In 2012-2013, 75% of clients said they were satisfied with our service, which means we are essentially sustaining the high performance we achieved the previous year.

In fact, we are making progress on many fronts. For example, this year, 96% of all air licences were issued within 14 days—a 2% improvement over 2011-2012. In addition, in 2012-2013, medium or low complexity disputes before the Agency were resolved within an average of 76 days—an average of 13 days less than last year and 44 days less than our 120-day target.

In 2012-2013, the Agency successfully developed and initiated the implementation of new all-in air price advertising regulations. We also undertook a number of initiatives to prepare the Agency to assume expanded rail level of service arbitration responsibilities, should Parliament approve proposed Bill C-52, *Fair Rail Freight Service Act*.

I encourage you to look at the key highlights and impressive performance results presented throughout this report to find out more about our accomplishments this year.

Our strategic direction

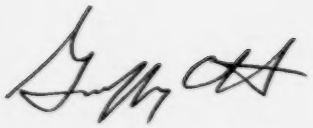
We have maintained our focus on streamlining our processes to minimize the impact of unnecessary regulatory hurdles on Canadian businesses. As part of our Process Service Modernization Initiative, we have already mapped out and simplified the processes for a number of our key regulatory responsibilities. In addition, we continue to publish interpretation notes and resource tools on a wide variety of topics to help the businesses we regulate understand – in simple, clear terms – how to meet their regulatory requirements.

The Agency has also reached out to clients and stakeholders, consulting widely on such topics as new rail arbitration services, updated General Rules of Procedure and new industry requirements for air services price advertising. This focus on consultation clearly demonstrates our commitment to transparency, open government and to taking into account what we hear.

In providing quality services to our clients and stakeholders, we know that our people are the key to our success. That's why I'm pleased to highlight the launch of our new corporate Code of Values and Ethics and our Recognition and Awards program. These initiatives, along with our previously established Employee Engagement Framework, will help us support and sustain an expert workforce in the years to come.

Overall, the Agency is well on track to achieving the objectives set out in its 2011-2014 Strategic Plan. At the same time, we remain committed to delivering exceptional service as a quasi-judicial tribunal and economic regulator and to supporting a competitive, efficient and accessible federal transportation network.

Finally, I want to express my appreciation to my colleague John Scott, who retired earlier this year from his role as Vice-Chair and Member, for his outstanding support, wise counsel and dedicated service to the Agency since 2007. I would like to extend a warm welcome to Sam Barone, who joined the Agency as Vice-Chair and Member in March 2013.



Geoff Hare
Chair and Chief Executive Officer

HIGHLIGHTS

In its 2011-2014 Strategic Plan, the Agency identified three priorities for action. What follows is a brief summary of key accomplishments regarding each of these three priorities in 2012-2013.

CLIENT SERVICE

- Widely distributed a new, enhanced edition of *Fly Smart*, a popular resource for air travellers
- Implemented innovative ways to enhance the efficiency of the Agency's case management practices
- Made progress on reducing the overall time needed to resolve disputes
- Reviewed the qualification standard for the Agency's list of arbitrators for final offer arbitration, based on stakeholder consultations
- Continued to obtain valuable and highly positive feedback through the Agency's latest client satisfaction surveys
- Developed user-friendly resource tools to inform clients on topics such as resolving accessibility disputes and using mediation

REGULATORY REGIME RENEWAL

- Implemented the Air *Transportation Regulations*' new requirements for air services price advertising, leading to greater transparency for consumers
- Modified the Western Grain Revenue Cap program to improve its efficiency and incorporate the outcomes of two significant Agency decisions on the pension costs and cost of capital for federal railway companies
- Amended the *Railway Interswitching Regulations* and revised interswitching rates
- Increased the transparency of the regulatory regime by issuing interpretation notes and guidelines
- Continued to improve and streamline business processes in order to offer efficient and timely services
- Continued to play a leadership role in updating the International Civil Aviation Organization's guidance material and standards for travellers with disabilities
- Published a new Code of Practice and Resource Tool to help increase the accessibility of air terminals that are not part of the National Airports System

PEOPLE

- Launched an awards and recognition program to recognize employee accomplishments and sustain employee pride in the quality of their work
- Produced a new Agency Code of Values and Ethics, shaped by staff ideas and feedback, to ensure our actions reflect Public Service values
- Implemented a web content management system on the Agency's intranet that allows for better internal communication, more dynamic content and interactive work tools
- Provided employees with competency profiles to help them self-assess against the requirements of their present job, identify training and development needs, and plan for future development
- Began providing training to all employees with supervisory responsibilities on active listening, communication and conflict resolution skills

WHO WE ARE

The Canadian Transportation Agency is an independent, quasi-judicial tribunal and economic regulator. It makes decisions and determinations on a wide range of matters within the federal transportation system under the authority of Parliament, as set out in the *Canada Transportation Act* and other legislation.

OUR MANDATE

Economic regulation, to provide approvals, issue licences, permits and certificates of fitness, and make decisions on a wide range of matters involving federal air, rail and marine transportation.

Dispute resolution, to resolve complaints about federal transportation services, rates, fees and charges.

Accessibility, to ensure Canada's national transportation system is accessible to all persons, particularly those with disabilities.

OUR VISION

Our Vision is a competitive and accessible national transportation system that fulfills the needs of Canadians and the Canadian economy.

OUR MISSON

Our Mission is to be a respected and trusted tribunal and economic regulator through efficient dispute resolution and essential economic regulation.

OUR VALUES

Respect for democracy
We uphold Canadian parliamentary democracy and promote constructive and timely exchange of views and information.

Respect for people
We treat people with dignity and fairness and foster a cooperative, rewarding working environment.

Integrity
We act with honesty, fairness, impartiality and transparency.

Stewardship
We use and manage our resources wisely and take full responsibility for our obligations and commitments.

Excellence
We provide the highest quality service through innovation, professionalism and responsiveness.

Geoffrey C. Hare,
Chair and CEO

Sam Barone,
Vice-Chair and Member

Raymon J. Kaduck,
Member

J. Mark MacKeigan,
Member

Jean-Denis Pelletier,
Member

EMPLOYEES

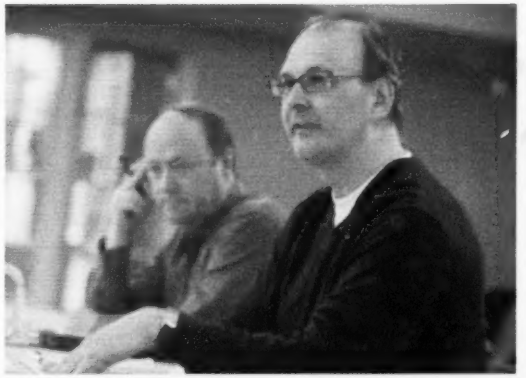
The Agency employs more than 250 people with a variety of backgrounds and skill sets. Our workforce is made up of economists, engineers, lawyers, financial analysts, human resource and communications specialists, mediators, as well as case management, licensing and enforcement officers, and other key support staff. Because the Agency is a relatively small entity within the public service, we work closely together—creating a tightly-knit group that understands the far-reaching effects of its work within and outside the Agency.

What's more, there is a strong sense of unity as diverse talents are often assembled into multi-disciplinary teams to tackle complex transportation matters. This ability to work together contributes greatly to the Agency's effectiveness by establishing a collaborative and collegial atmosphere where each employee's contribution is sought and valued.

MEMBERS

The Agency's five full-time Members are appointed by the Governor in Council. The Members are the quasi-judicial decision-makers responsible for rendering decisions and orders related to formal complaints or applications, as well as addressing other issues affecting Canada's national transportation system.

For more on the Agency, go to cta.gc.ca/eng/aboutus



WE'RE MOVING FORWARD

The Agency's 2011-2014 Strategic Plan charts a clear three-year course, ensuring that the Agency's collective efforts, as well as our financial and human resources, are effectively focused on realizing the goals we have identified.

Now at the end of its second year, our plan continues to help us make the most effective use of our resources. It takes into account key emerging issues and prepares the Agency to respond to them. It is informed by feedback on our performance—and insights gained—from our clients and stakeholders through our client satisfaction surveys and extensive outreach efforts. And it is supported by a comprehensive set of performance measures and challenging stretch targets covering the full range of services we provide.

Simply put, with this plan, the entire Agency team shares a vision, understands it clearly, and has its sights set on achieving it.

OUR 2011-2014 STRATEGIC PLAN

The Agency is pursuing three strategic priorities:

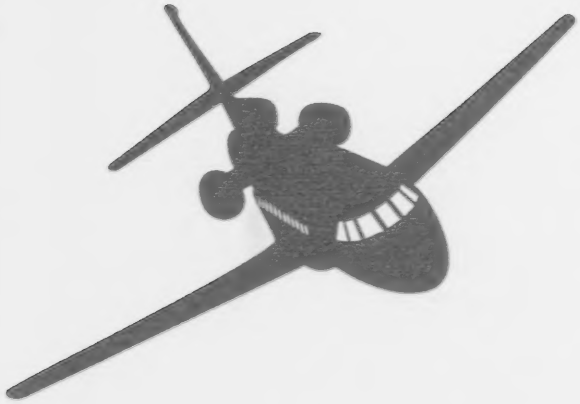
1. A key to the Agency's successful future is high-quality **client service**.
   By improving and modernizing our services, the Agency will better meet the needs of our clients. As well, by being aware of our constantly changing environment, we will be able to anticipate changes and proactively respond to our clients' changing requirements.

2. The Agency's ability to fulfill its vision is dependent on an effective and efficient **regulatory regime** that is responsive to the Canadian transportation industry while serving the interests of Canadians.
   We are committed to reviewing and renewing the regulatory regime and how it is administered in order to be responsive to the ever-changing reality of the Canadian transportation system and remain aligned with government priorities.

3. Ultimately, the Agency's ability to remain an effective tribunal and economic regulator rests on the knowledge, skills and dedication of its **people**.
   In today's environment, we are faced with the simultaneous challenges of enhancing services to Canadians and responding to changing workforce demographics. We will continue to sustain and build the Agency's knowledge base through effective employee development. We are committed to continuing to invest in our most important asset: our people.

To read the Agency's 2011-2014 Strategic Plan, go to cta.gc.ca/eng/2011-14sp

STRATEGIC PRIORITY	OUTCOME
CLIENT SERVICE	Our dispute resolution services are high quality and our clients are well informed and served in a responsive and timely manner.
REGULATORY REGIME RENEWAL	Our regulatory and non-regulatory approaches and their administration are up-to-date, well understood and delivered effectively and efficiently.
PEOPLE	Our employees are engaged, knowledgeable, respected and provide excellent service.



MEASURING OUR PERFORMANCE

The Agency strives for high performance in everything it does. The key performance targets found throughout this report allow us to measure progress towards providing ever-improving quality service, as well as timely decisions and determinations.

In support of its three main priorities, the Agency aims to complete the strategic actions identified in its Strategic Plan by March 2014. Our ongoing monitoring and reporting activities show that we are on track to meet all of our objectives.

WE'RE LISTENING

Because transportation matters affect us all, the Agency is committed to finding new and innovative ways to consult with and engage Canadians. We want to not only ensure that our clients and stakeholders are well informed, but also that we understand and are responsive to their needs.

LISTENING TO OUR CLIENTS AND STAKEHOLDERS

Each year, the Agency conducts client satisfaction surveys to gauge its success as a client-centred organization. These surveys help us to better understand our clients' and stakeholders' needs and how our services can be continuously improved.

Clients surveyed include those who used the Agency's dispute resolution services or applied for new air licences, as well as carriers and terminals that underwent an inspection. Respondents were asked to rate their satisfaction with respect to several aspects of service from the Agency.

The 2012-2013 survey results show that, regardless of the nature of their interaction, 75% of clients are satisfied with the overall quality of service provided by the Agency. This is essentially stable as compared to the results of the previous year, showing that we are broadly succeeding in offering quality service to our stakeholders and clients.

The results clearly demonstrate that our people make a difference. When respondents were asked why they had given the Agency an overall positive rating, their most frequent answer (42%) related to excellent service.

Further, over three quarters of respondents said they were very or somewhat satisfied with the knowledge and competence of Agency staff, their helpfulness and courteousness. And over three quarters of respondents strongly or somewhat agree that staff responded quickly to their request and that they were treated fairly—a significant achievement for a tribunal, given that the outcome of a respondent's case may not have been in their favour.

CLIENT SATISFACTION

PERFORMANCE TARGET

70% **overall client service satisfaction**

77% As of March 31, 2012

75% As of March 31, 2013

To read the client satisfaction survey reports, go to cta.gc.ca/eng/surveys

STRATEGIC ACTION (TARGET: 2014)

Measure and monitor client and stakeholder satisfaction and program performance to identify opportunities for improvement and respond to client and stakeholder needs

COMPLETED

- Take into consideration stakeholder feedback obtained through meetings and participation in industry events in the modernization and ongoing administration of the regulatory regime
- Monitor service performance standards; prepare and disseminate reports, including course correction plans

"The open and transparent consultation process undertaken by the Canadian Transportation Agency in the development of the new advertising rules should serve as a model for future co-operation between industry, consumer organizations and regulatory bodies." - David Goldstein, President and CEO of the Tourism Industry Association of Canada

CONSULTING WITH CANADIANS

The Agency recognizes that a key to its effectiveness and success is the extent to which its initiatives—policies, regulations, guidelines and decisions—are grounded in current realities and are fair in balancing the interests of the transportation sector's many and diverse clients and stakeholders.

The formal consultation process is one of the key tools the Agency uses to gather the insights it needs to do its work. These consultations allow us to better understand the perspectives of a wide range of citizens, stakeholders and experts to help us develop more informed and effective dispute resolution and regulatory services, including the ongoing modernization and administration of our regulatory regime.

Formal consultations on the following subjects were completed or ongoing in 2012-2013:

- new industry requirements for air services price advertising;
- significant revisions to the Agency's *General Rules*, the regulations that govern our formal court-like processes;
- a new resource tool on the resolution of disputes through mediation;

- revisions to the qualification standard and expanding the Agency's list of arbitrators for final offer arbitration;
- modifying the *Railway Interswitching Regulations* to update the methodology used in establishing interswitching costs;
- a new policy for air carriers regarding their rules on the handling of passengers' baggage; and
- Agency guidance on the requirement to hold an air service licence in order to operate an air service.

The Agency also consulted with its Accessibility Advisory Committee on the following initiatives:

- updates to Part VII of the *Air Transportation Regulations*, which addresses terms and conditions of carriage of persons with disabilities;
- a new code of practice for the accessibility of terminals not part of the National Airports System;
- three resource tools on how to provide service to persons with disabilities who travel with mobility aids, an attendant, or a service animal.

MODERNIZING THE AGENCY'S GENERAL RULES

One of the key tools the Agency uses in carrying out its mandate is the *Canadian Transportation Agency General Rules*, which set out the overall procedures, processes and general timelines applied by the Agency.

Clients and stakeholders have clearly indicated that they want more information about the Agency's processes. They also want these processes to be faster and simpler, as well as more predictable and transparent. In response, the Agency made significant progress in 2012-2013 towards revising its *General Rules*, with a view to modernizing, streamlining and simplifying them.

TRANSPARENCY

PERFORMANCE TARGET

100% **formal decisions published on the Agency's website within one business day**

94% As of March 31, 2012

99% As of March 31, 2013

For a list of ongoing and past consultations, go to cta.gc.ca/eng/consultations or visit consultingcanadians.gc.ca

STRATEGIC ACTION (TARGET: 2014)

Engage in proactive dialogue with clients to better understand their needs

ONGOING

→ Development of online discussion forum for Agency Accessibility Advisory Committee members

In November 2012, the Agency held consultations on a draft of the revised *General Rules*. The comments have provided valuable input for consideration. The aim is for the revised *General Rules* to come into effect by summer 2013.

OUR PEOPLE

Any successful organization—in the public or private sector—understands that its employees are its greatest asset.

The Agency relies on the knowledge and skills of its employees to provide support to its dispute resolution process, to maintain an effective and responsive regulatory framework, and to foster its reputation as a respected, trusted tribunal and economic regulator.

Staff development and knowledge transfer initiatives are being undertaken to ensure stakeholders and clients remain confident that Agency staff have the expertise and institutional knowledge to effectively deliver on their responsibilities.

SUSTAINING A CULTURE OF EXCELLENCE

The Agency actively promotes a culture of continuous improvement and innovation among its staff. Indeed, experienced, skilled and professional people help us respond effectively to the evolving needs and expectations of our transportation sector clients and stakeholders.

Such excellent work deserves to be recognized, which is why the Agency established a new awards and recognition program.

Through its formal awards, the Agency celebrates outstanding contributions and exceptional performance. Through *Bravo!*, the informal recognition component, the Agency strives to create a culture where everyone is involved in encouraging and celebrating achievements.

Nearly half of all employees attended dialogue sessions and provided input into the development of a new Agency Code of Values and Ethics in line with the *Values and Ethics Code for the Public Sector*. These sessions were integral to the development of the Code, which provides a solid foundation for sustaining a culture that upholds our core values and supports effective service to clients.

To help make the Code a living reality, the Agency's designated officials have been actively involved in promoting such topics as diversity, ethical dilemmas and informal conflict resolution through information sessions, online tools and team meetings.

Another initiative to support shared values of communication, respect and trust through the Agency involved training for all employees with supervisory responsibilities on active listening, communication and conflict resolution skills. These courses will be offered to the rest of employees in the coming years.

STRATEGIC ACTION (TARGET: 2014)

Embed a workplace culture that promotes service quality and innovation

COMPLETED

→ Implemented a new Agency awards and recognition program to recognize employees' exceptional contributions

ONGOING

→ Staff engaged in reviewing and developing effective and efficient internal processes

STRATEGIC ACTION (TARGET: 2014)

Recruit and retain people with the skills and competencies required by the Agency, while also providing our employees with professional development opportunities and the knowledge and tools they need to carry out their work

COMPLETED

- → Developed an inter-branch onboarding program for new employees

ONGOING

- → Formalize a knowledge management strategy
- → Finalize the development of a targeted recruitment strategy
- → Develop Agency learning strategy, including internal and external training opportunities

SUPPORTING CAREER DEVELOPMENT AND EXPERTISE

To keep in step with changing staff demographics, the Agency remains focused on the capture and preservation of corporate knowledge and expertise through knowledge transfer projects.

The Agency also continues to offer in-house courses on efficient file hearings, communicating with parties, administrative monetary penalties and decision writing, as well as an annual course on court trends. These efforts have contributed to more efficient and consistent dispute resolution services.

To address employee concerns about their mobility and career progression, the Agency has worked to ensure the availability of developmental opportunities, with the ultimate goal of continuing to provide consistent, quality service to its clients and stakeholders.

The Agency has also provided employees with competency profiles to help them self-assess against the requirements of their present job, identify training and development needs, and plan for their future growth.

In 2012-2013, upgrades were made to the Agency's intranet to support ongoing communication and dialogue and to provide employees with the tools they need to carry out their work. Improvements include dynamic content and interactive features, such as customizable employee profiles and a system of filters for finding forms, policies and procedures.

STRATEGIC ACTION (TARGET: 2014)

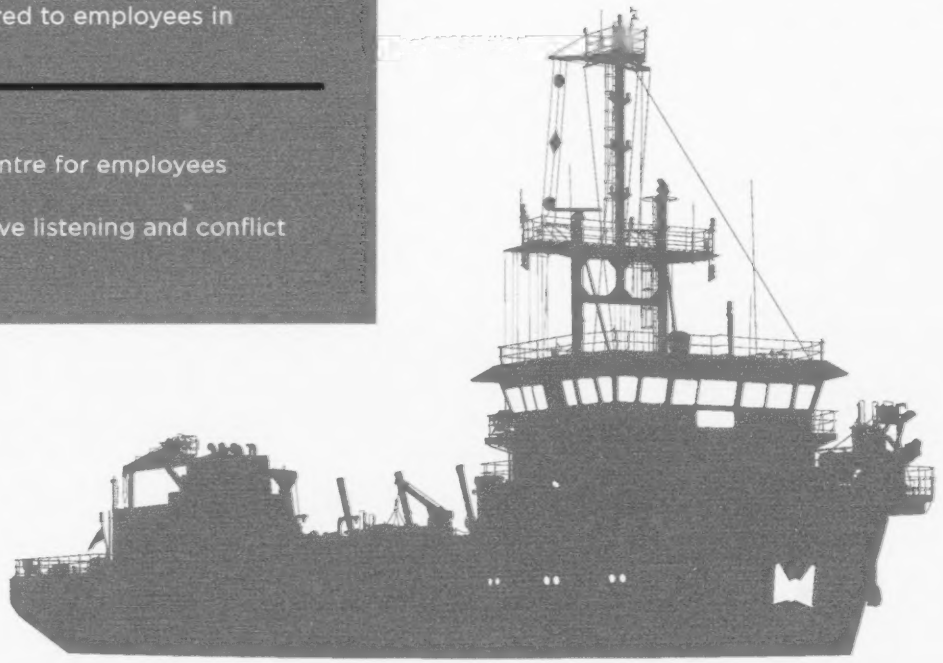
Champion public service values and ethics and a climate of trust, integrity and respect

COMPLETED

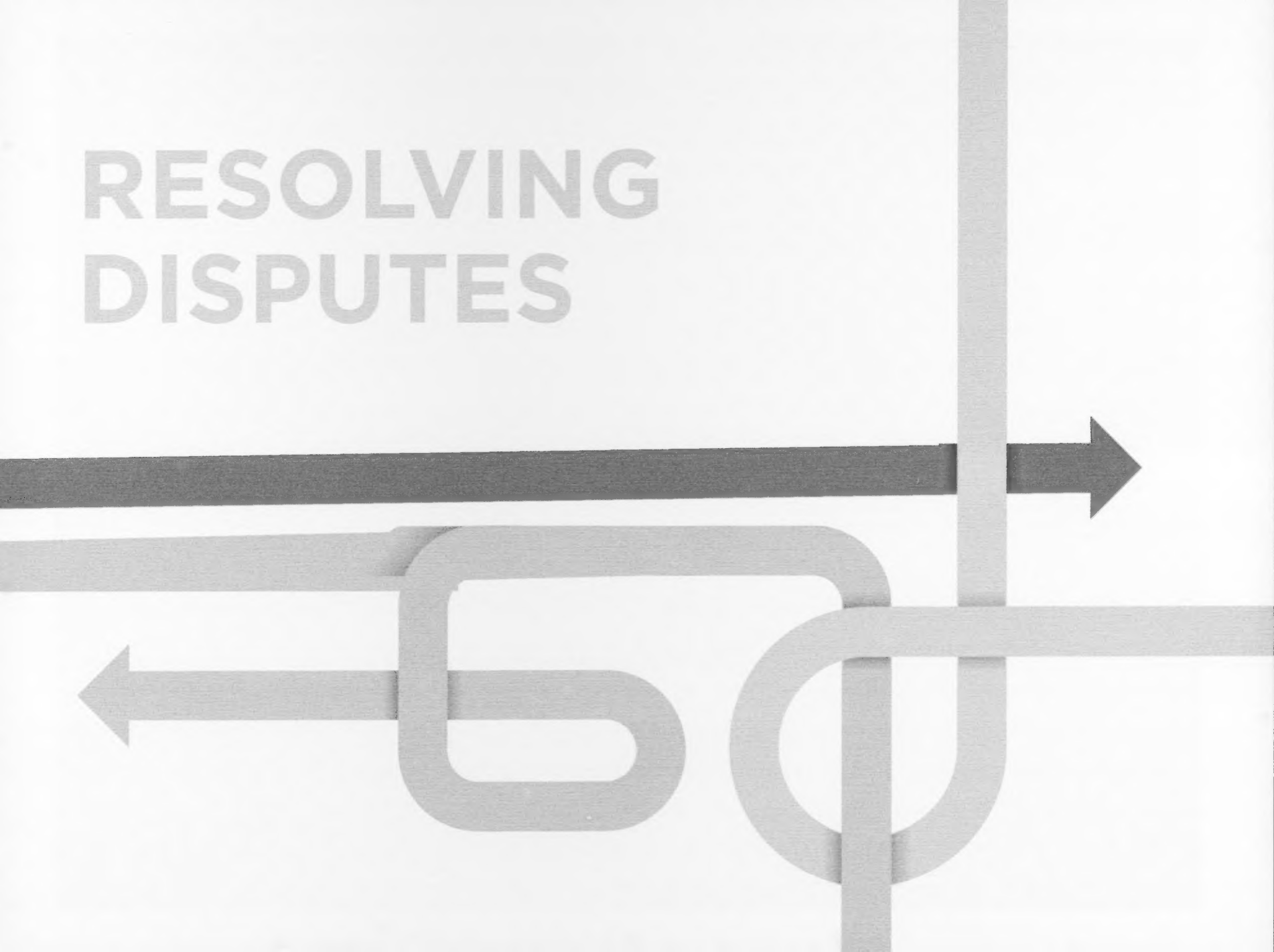
- → Agency employee Code of Values and Ethics developed
- → Designated officials actively involved in promoting values and ethics issues
- → Workplace communications training courses offered to employees in supervisory roles

ONGOING

- → Create informal conflict management resource centre for employees featuring online and print resources
- → Offer training on workplace communications, active listening and conflict resolution skills to all Agency staff



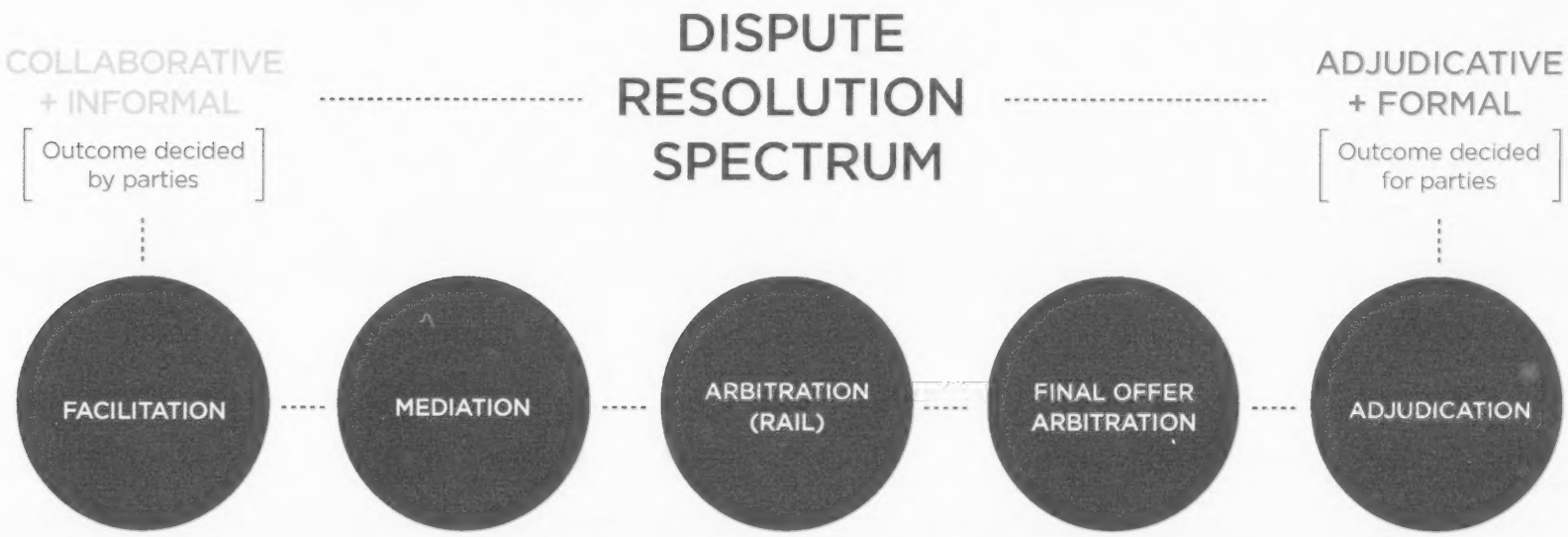
RESOLVING DISPUTES



In 2012-2013, as is the case each year, hundreds of transportation users and service providers turned to the Agency looking for ways to resolve their disputes about:

- transportation services;
- fares, rates and charges;
- terms and conditions of carriage; and
- accessibility.

The Agency provides a number of dispute resolution services, ranging from facilitation to mediation, arbitration, final offer arbitration, and adjudication. The Agency has developed guidelines to streamline its approach to dispute resolution into two separate processes: informal and formal.



TIMELY DISPUTE RESOLUTION

80%	PERFORMANCE TARGET **of complex disputes resolved within 90 days (after pleadings are closed)**
46%	As of March 31, 2012
45%	As of March 31, 2013
120	**Average days to resolve all other disputes (except coasting trade*)**
89 DAYS	As of March 31, 2012
76 DAYS	As of March 31, 2013

*See "Resolving Marine Disputes" for the performance results on coasting trade dispute resolution.

In its 2011-2014 Strategic Plan, the Agency identified client service as a key priority. Over the past year, we have worked hard to sustain our reputation as a service-oriented organization and to consistently strive for continuous improvement. This dedication to quality service is reflected in our vision, mission and values, but also in our day-to-day interactions with our clients.

Our strategic outcome is that our clients see our dispute resolution services as high quality, and that they feel they are well informed and are served in a fair, responsive and timely manner.

THE AGENCY RESOLVED 470 DISPUTES IN 2012-2013.

Of these,

- **413** were resolved through facilitation, and
- **8** were resolved through mediation.

In addition, **142** cases were referred to formal adjudication at the start of the year.

Of these,

- **45** were resolved through decisions issued*, while
- **38** were withdrawn, dismissed or closed due to lack of response from the applicant.

*Proceedings in some cases combined to gain efficiencies.

STRIVING FOR EFFICIENCY IN DISPUTE RESOLUTION

The Agency strives to adjudicate cases of moderate complexity within 120 days—a performance target we exceeded for the second year in a row.

For complex cases, the Agency adopted a performance target to have 80% of cases resolved within 90 days after the close of pleadings. Meeting this aspirational target has proven challenging due to the potential precedential value of the cases, the need to resolve novel issues and the procedural complexities posed by the involvement of multiple parties.

PROVIDING EFFECTIVE OPTIONS TO CLIENTS

In 2012-2013, over 89% of complaints brought forward by individual consumers were resolved informally, either through facilitation or mediation. The advantages of this approach are that acceptable solutions are found quickly, while both parties typically save considerable time and expense by resolving the issue without resorting to the Agency's formal adjudication process.

The majority of complaints received by the Agency are resolved by facilitation—a process which involves an informal discussion with the parties, facilitated by Agency staff who contribute their expert knowledge of the federal transportation system and dispute resolution. In the past year, 413 disputes were facilitated—of these, 12 were related to accessibility, 370 were related to air and 31 were related to rail.

STRATEGIC ACTION (TARGET: 2014)

Improve case management practices and procedures

ONGOING

- → Increase facilitation and mediation of complaint cases
- → Enhance processes and procedures for handling oral hearings, mediating complaints, arbitrating disputes and the administration of cases
- → Provide staff with techniques and training to increase efficiency of case management
- → Ensure consistent implementation of the case management toolkit

For detailed statistics on dispute resolution, go to cta.gc.ca/eng/statistics

"Thank you ever so much for your assistance in resolving this matter. CTA certainly did not let me down."
– Gopal Gokeda, complainant

Mediation is an informal, voluntary and confidential process provided by the Agency. It promotes open and respectful communication, allowing the parties in a dispute to explore creative options and develop solutions in a timely and cost-effective manner. The Agency administers mediations, providing specially-trained mediators to assist the parties involved in a dispute.

The Agency met its target by completing 8 fully resolved mediation cases either within 30 days or with an extension requested by the parties.

The Agency also administers final offer arbitration (FOA), referring submissions for FOA to an external arbitrator selected by the parties to a dispute. In 2012-2013, the Agency referred 2 cases for FOA.

The Agency continues to strengthen the quality of service provided through alternative dispute resolution. As part of this ongoing effort, the Agency reviewed the qualification standard arbitrators must meet in order to be placed on the Agency's roster. As well, additional names were added to the roster to expand the choice of arbitrators available to the parties.

PUBLISHED: MEDIATION RESOURCE TOOL

One of the Agency's key priorities for the 2011-2014 period is to increase awareness of, and access to, its alternative dispute resolution services, particularly mediation.

To help clients and stakeholders better understand the Agency's mediation processes and decide if mediation is the right approach for them, the Agency published *Resolution of Disputes through Mediation: A Resource Tool*. Written in plain English, the tool helps make the Agency's services more accessible to all Canadians by walking readers through each step of the mediation process.

IN 2012-2013, 48 MEDIATION CASES WERE PROCESSED.

- **8** cases were successfully resolved.

Of these,

- **3** related to rail disputes;
- **1** related to an accessibility dispute; and
- **4** related to air disputes.

- **4** cases were partially resolved;
- **25** cases were withdrawn, unresolved or declined by one party; and
- **11** cases are currently in progress.

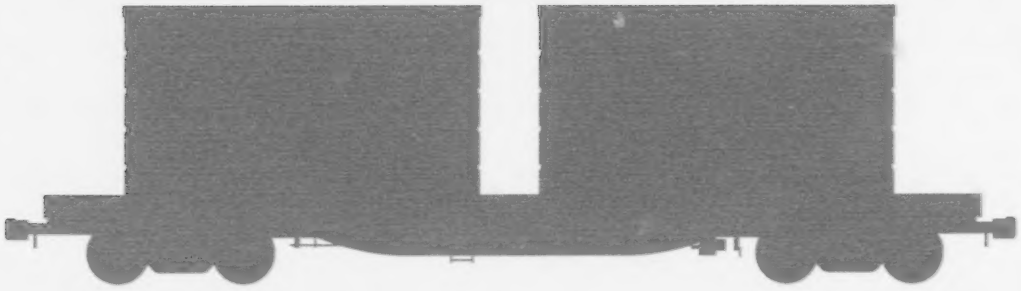
EFFECTIVE MEDIATION AND FACILITATION

PERFORMANCE TARGET

100% **of disputes resolved through mediation within 30 days (when no extension is requested)**

100% As of March 31, 2012

100% As of March 31, 2013



For more on the Agency's dispute resolution processes, go to cta.gc.ca/eng/disputes

STRATEGIC ACTION (TARGET: 2014)

Introduce new and expanded client-oriented resources to facilitate access to and understanding of the Agency's dispute resolution services

ONGOING

- → Revise Agency rules of procedure for disputes, in part to help unrepresented parties better understand the requirements and participate in the Agency's formal dispute resolution process
- → Expand information resources on the website to support the resolution of air travel complaints
- → Develop policies on ensuring the accessibility of Agency hearings, consultations and meetings
- → Continue to enhance access to web-based information, forms and dispute resolution tools for all clients
- → Provide guidelines on the processing of complaints related to air, rail and marine transportation
- → Produce guidelines on the processing of allergy-related accessibility complaints

STRATEGIC ACTION (TARGET: 2014)

Expand the use of alternative dispute resolution and actively promote it

COMPLETED

- Introduced a new resource tool for the mediation of disputes
- Reviewed and consulted on improvements to the current approach to final offer arbitration

ONGOING

- Develop and implement arbitration rules and procedures
- Through promotional efforts and "active offer," expand client use of alternative dispute resolution (ADR) services
- Broaden base of internal expertise on ADR
- Produce a new ADR code of practice and related guidelines

RESOLVING ACCESSIBILITY DISPUTES

The Agency has a responsibility to ensure that any undue obstacles to the mobility of persons with disabilities are removed from federal air, rail, and extra-provincial ferry and bus transportation.

One of the ways that the Agency improves accessibility is by resolving individual complaints on a case-by-case basis.

IN 2012-2013, THE AGENCY RESOLVED 30 ACCESSIBILITY DISPUTE CASES.

Of these,

- 12 were resolved through facilitation;
- 1 was resolved through mediation; and
- 17 were resolved through adjudication.*

In addition,

- 1 was partially resolved through mediation;
- 12 were withdrawn or closed due to lack of response from applicants; and
- 12 were still in progress at year end.

*Proceedings in some cases combined to gain efficiencies

EFFECTIVE MEDIATION AND FACILITATION

PERFORMANCE TARGET

80% of accessibility disputes facilitated within 30 days

100% As of March 31, 2012

100% As of March 31, 2013

PROGRESS REPORT ON ACCESSIBILITY

In 2012-2013, the Agency exceeded its performance target for accessibility disputes with all 12 disputes using facilitation resolved within the 30-day target. The 1 mediated accessibility dispute was resolved beyond the 30-day target at the request of the parties.

An additional 17 cases were resolved through the Agency's formal adjudication process.

For statistics on disputes involving the mobility of persons with disabilities, go to
cta.gc.ca/eng/statistics

For more on resolving accessibility disputes, go to
cta.gc.ca/eng/access-disputes

PUBLISHED: RESOURCE TOOLS FOR ACCESSIBLE TRANSPORTATION COMPLAINTS

The Agency developed two new resource tools for parties involved in accessible transportation complaints—one for transportation service providers and the other for persons with disabilities.

The publications explain the Agency's processes for resolving accessibility disputes and clarify the key questions addressed in formal adjudication:

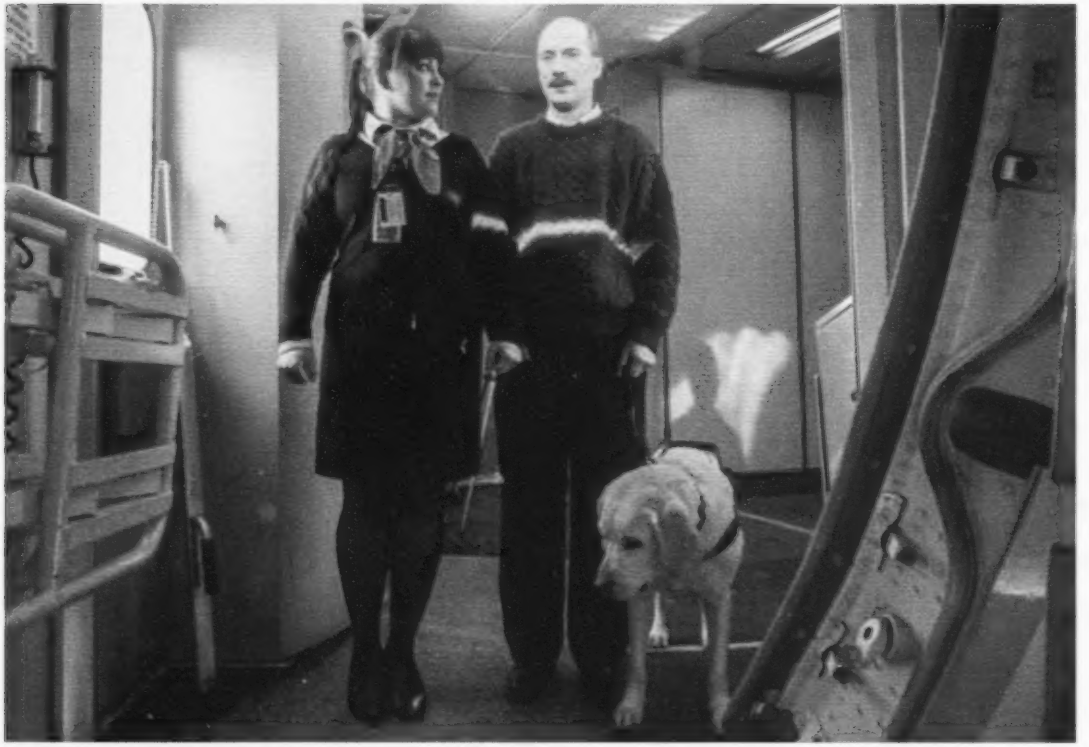
- Is the applicant a "person with a disability" for the purposes of the *Canada Transportation Act*?
- Did the applicant encounter an obstacle in the federal transportation network?
- Was the obstacle undue?

Together, the tools will ensure that parties to a dispute are fully aware of their options and the Agency's processes, with the aim of reaching timely, effective and long-lasting resolutions.

DECISION ISSUED: CATS IN AIRCRAFT CABINS

The Agency issued its final decision addressing Air Canada's, Air Canada Jazz's and WestJet's accommodation of persons with a cat allergy disability.

In preliminary decisions, the Agency ruled that the three complainants were, in the context of air travel, people with disabilities due to their allergy to cats and that the carriers' pet policies constituted an obstacle to their mobility.



In its final decision issued in June 2012, the Agency found the obstacle to be undue and set out the corrective measures for the carriers to implement. For instance, Air Canada, Air Canada Jazz and WestJet must provide a five-row minimum seating separation at all times between a person with a cat allergy disability and cats carried as pets in the cabin, provided at least 48 hours advance notification is given (and with best efforts to do so with less than 48 hours notification).

"Your project *Take Charge of Your Travel: A Guide for Persons with Disabilities* has been identified as an example of good practice in tourism accessibility."

– Alicia Barragán Iturriaga, ONCE Foundation for Cooperation and Social Inclusion of People with Disabilities, Spain

RESOLVING AIR TRAVEL DISPUTES

The Agency assesses complaints against the air carrier's tariff—its fares, rates and charges, and terms and conditions of carriage—as well as Canadian transportation law and applicable international conventions. Where it appears that a carrier has not met its obligations, Agency staff will approach the carrier and informally attempt to obtain the carrier's voluntary agreement to do so. The vast majority of such complaints are resolved in this manner.

The Agency does not have jurisdiction over safety issues and generally refers these complaints to Transport Canada. The Agency also does not have the mandate to deal with air travel complaints involving the quality of air carrier services, such as the attitude of airline staff; such issues are the sole responsibility of airline management.

The Agency is, however, required by legislation to report on the number and nature of all air travel complaints received.

The Agency has a mandate to address a broad range of consumer protection issues related to air travel, including:

- baggage
- flight disruptions
- tickets and reservations
- denial to board
- refusal to transport
- passenger fares and charges
- cargo
- carrier-operated loyalty programs

PROGRESS REPORT ON AIR DISPUTES

In 2012-2013, 370 cases were facilitated, with 93% of these handled within the Agency's 90-day target.

Far fewer cases are now dealt with through the Agency's formal process, with informal approaches, such as facilitation, proving to be an effective solution. Of the cases that first went to facilitation, only 16 could not be resolved. In these 16 cases, Agency staff did confirm that the carrier had respected its terms and conditions of carriage. However, the unreasonableness of the carrier's terms and conditions of carriage was raised as an issue and the cases were therefore referred to the formal process.

Thirteen cases were submitted directly to the Agency for adjudication. Of these, 8 cases were resolved. Such cases are generally very complex, often involving overarching policy issues and the interpretation and application of international conventions in Canada.

EFFECTIVE MEDIATION AND FACILITATION

PERFORMANCE TARGET

80% **of air travel complaints facilitated within 90 days**

95% As of March 31, 2012

93% As of March 31, 2013

TOTAL AIR TRAVEL COMPLAINTS

In 2012-2013, the Agency received a total of **554** air travel complaints—**529** for informal facilitation and **25** for formal adjudication. It also began the year with a carry-over caseload of **65** complaints which had not been resolved in the previous year, bringing the Agency's total active caseload to **619** air travel complaints.

FORMAL PROCESS

DISPUTES RESOLVED

- 16 air travel disputes were resolved through adjudication.[1]

Of these,

- 5 related to allegations that a carrier had failed to respect its tariff;
- 9 related to allegations that the provisions of a carrier's tariff were unreasonable and/or unduly/unjustly discriminatory; and
- 2 related to allegations that the carrier failed to respect provisions in the *Canada Transportation Act*.

[1] Proceedings in some cases combined to gain efficiencies.

WITHDRAWN, DISMISSED OR ONGOING

In addition,

- 2 air travel disputes were withdrawn or dismissed from the Agency's adjudication process; and
- 13 cases were still in adjudication at year end.

INFORMAL PROCESS

DISPUTES ADDRESSED

583 air travel disputes were addressed through the Agency's informal resolution process.

Of these,

- 42 were determined to be outside the Agency's mandate;
- 1 was determined to be about a carrier that had ceased operations;
- 23 were withdrawn;
- 370 were settled through facilitation; and
- 16 were referred to the Agency's adjudication process.

131 additional cases were still undergoing facilitation at year end.

DISPUTES REFERRED TO CARRIER

In addition,

157 complaints submitted to Agency staff without first being brought up by the complainant with the carrier were referred for resolution between the complainant and the carrier.

Of these,

- 102 cases were resolved between the complainant and the carrier;
- 50 cases were not resolved between complainant and carrier; and
- 5 cases referred to the carriers by Agency staff were still being reviewed by the carrier at year end.

For more on resolving air disputes, go to cta.gc.ca/eng/air-disputes

For statistics on air travel complaints, go to cta.gc.ca/eng/statistics

MONITORING TRENDS IN FACILITATED AIR TRAVEL DISPUTES

CATEGORIES OF COMPLAINTS

For the seventh year in a row, quality of service was the most common issue raised in complaints received for facilitation, even though it is outside the Agency's mandate to resolve complaints about such matters. This issue was cited 694 times by complainants.

Flight disruptions also continue to be a concern for air travellers, having been cited 281 times in complaints in 2012-2013. Issues related to lost, damaged or delayed baggage, and other baggage-related concerns, were cited 212 times in complaints.

CANADIAN AIR CARRIERS

Most of the complaints in the facilitation process were about Canada's major carriers, with smaller carriers accounting for 1.3% of all complaints. Specifically, in the past year, there were 301 complaints about 8 Canadian carriers, compared to 215 complaints in 2011-2012 and 219 complaints in 2010-2011.

Overall, in 2012-2013, there were more complaints about major air carriers than in the previous year. Notably, the number of complaints about Air Canada increased by 65—from 152 to 217. The number of complaints about Sunwing increased from 12 to 26. In addition, the number of complaints about WestJet increased from 8 to 14, and those about Jazz increased from 10 to 16.

Only in the case of Air Transat were fewer complaints received than in the previous year—with a total number of 18 in 2012-2013, as compared to 23 in 2011-2012.

FOREIGN AIR CARRIERS

The number of complaints about foreign carriers also rose from 145 in 2011-2012 to 218 in 2012-2013. Most notable were the increases in the number of complaints about Swiss International, United Airlines and Air France.

The number of complaints about Swiss International increased significantly, from zero in 2011-2012 to 51 in 2012-2013. Most of these complaints related to the carrier's cancellation of certain tickets which the carrier identified as being based on an erroneously filed fare.

The number of complaints about United increased from 16 in 2011-2012 to 21 in 2012-2013; meanwhile, the number of complaints about Air France increased by 10 from 6 to 16.

Again this year, more foreign, non-EU air carriers were subject to complaints—28 carriers in 2012-2013, compared to 24 in 2011-2012.

PUBLISHED: NEW EDITION OF *FLY SMART*

The Agency published the sixth edition of *Fly Smart*, a popular user-friendly resource for planning trips to, from and within Canada. It tells air travellers what they need to know about travel documents, tickets, baggage, insurance coverage and special requests—everything to get from the early stages of planning a trip, right through to the airport, their destination and back home again.

The Agency now also offers a handy pocket-sized list of its top ten Fly Smart tips, perfect for people on the go.

"The information in this booklet is so important and well put together... [*Fly Smart*] is one of those publications that should be distributed especially to people that don't travel often or new travellers." – Louise R. Bigras, Travel Consultant

DECISION ISSUED: AIR CANADA'S PROPOSED TARIFF REVISIONS TO NO LONGER TRANSPORT NON-HUMAN PRIMATES FOR RESEARCH

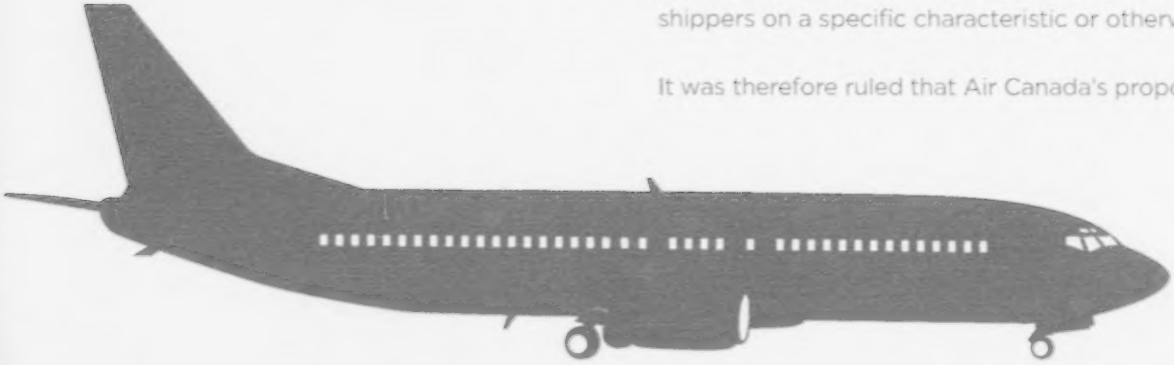
The Agency dismissed a complex complaint related to Air Canada's proposal to stop carrying non-human primates for research purposes.

In November 2011, Air Canada filed proposed revisions of its international cargo tariff to implement this change. Before the proposed revisions came into effect, the Agency received complaints that they were unjust, unreasonable or unduly discriminatory to shippers. The Agency suspended Air Canada's tariff revisions while investigating.

This proceeding involved many interested parties and many of the issues at stake were unprecedented, as the Agency focused on the context of cargo to establish specific factors in determining whether proposed tariffs are reasonable or unjustly discriminatory.

After assessing the facts and weighing the significant volume of evidence presented by the parties, the Agency found that Air Canada's decision to stop transporting non-human primates for research was a rational business decision and does not differentiate between shippers on a specific characteristic or otherwise.

It was therefore ruled that Air Canada's proposed tariff provisions are not discriminatory.



DECISIONS ISSUED: INCREASED RIGHTS AND REMEDIES FOR PASSENGERS TRAVELLING WITH AIR CANADA, WESTJET AND AIR TRANSAT

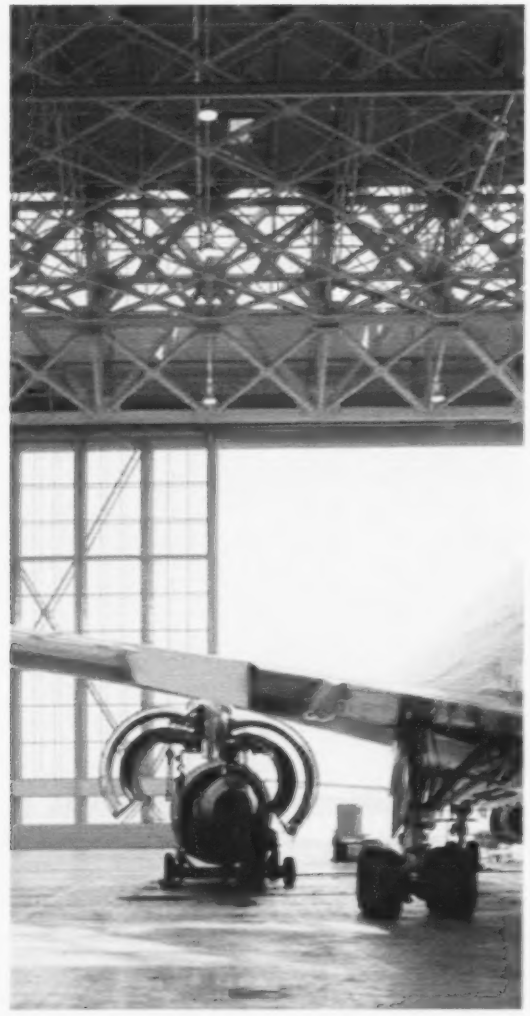
The Agency issued five decisions on the reasonableness of both the international tariff provisions of Air Canada, WestJet and Air Transat, and the domestic tariff provisions of Air Canada and WestJet relating to the overbooking, cancellation, delay and rerouting of flights.

The matters in question were wide-ranging, involving specific tariff-related issues that required an in-depth review. This, in turn, made the cases procedurally complex: during the course of the proceedings, the Agency issued over 57 interim decisions.

In the end, the final decisions have significantly increased the rights and remedies for passengers travelling with Air Canada, WestJet and Air Transat. For example:

- In the event a flight is delayed, overbooked or cancelled, passengers can now choose to either receive a refund or be rebooked.
- In situations within the carriers' control, they must consider rebooking passengers on the first available flight(s), including flights with non-partnered carriers.
- If overbooking or cancellation of a flight results in passengers choosing to no longer travel, they will be entitled to both a free return flight home within a reasonable time and a full refund of the original ticket price.

By harmonizing carriers' international and domestic tariff provisions, the Agency is ensuring that consumers are protected while travelling both within and to or from Canada.



RESOLVING RAIL DISPUTES

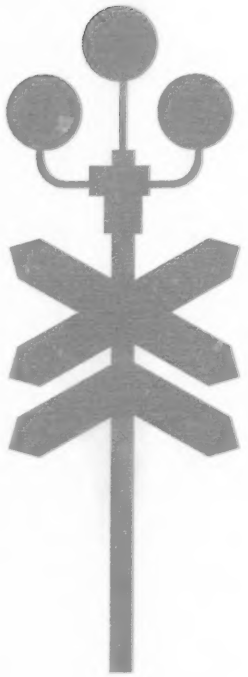
Part of the Agency's mandate is to help resolve disputes between railway companies and shippers or other parties, as well as between railway companies.

When negotiations break down, the Agency can be asked by one or both parties to assist, through facilitation or mediation, or to deal with a complaint through its adjudicative process.

An additional resolution mechanism is final offer arbitration (FOA), used to settle rate and service disputes between a shipper and a carrier. Final offer arbitration is administered by the Agency and conducted by an independent arbitrator from the Agency roster, who will select either the final offer of the shipper or the carrier.

The Agency investigates complaints and applications on the following topics:

- rail noise and vibration
- railway crossings
- transfer and discontinuance of railway lines
- interswitching
- running rights and joint track usage
- level of service
- public passenger service providers' use of railway lines and other railway assets
- incidental charges, such as demurrage



PROGRESS REPORT ON RAIL TRANSPORTATION

The Agency proactively offers alternative dispute resolution mechanisms that are timely, cost effective and meet the needs of rail shippers and railway companies.

Thirty-one rail disputes were facilitated in 2012-2013. Of these cases, 97% were successfully resolved within the performance target of 30 days, surpassing our performance target of 80%. As part of these cases, Agency staff successfully facilitated 27 requests related to railway noise and vibration where early intervention avoided the filing of a formal complaint.

For more on resolving rail-related disputes, go to cta.gc.ca/eng/rail-disputes

For detailed statistics on railway infrastructure and construction, go to cta.gc.ca/eng/statistics

The Agency continues to address complex issues related to railway noise and vibration—an area that presents some specific challenges. Such complaints are often filed by multiple parties or individuals representing community interest groups and complainants are often not familiar with the Agency's formal quasi-judicial process.

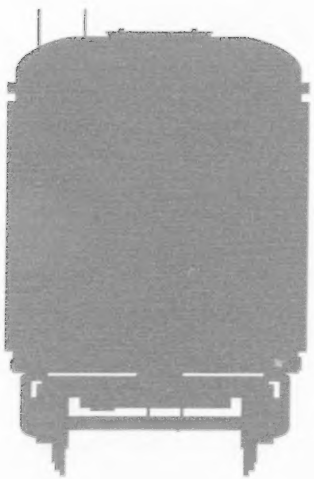
IN 2012-2013, THE AGENCY RESOLVED 44 RAIL DISPUTE CASES.

Of these,

- **31** were resolved through facilitation;
- **3** were resolved through mediation; and
- **10** were resolved through adjudication.

In addition,

- **24** disputes were withdrawn or closed due to lack of response from applicants; and
- **11** cases are currently in progress.



IN 2012-2013, THE AGENCY ISSUED 4 DECISIONS ON CROSSINGS THROUGH ITS ADJUDICATION PROCESS.

All of these concerned private or road crossings.

DECISION ISSUED: RAIL NOISE AND VIBRATION

A community group filed a complaint against CN and VIA Rail about current and anticipated noise and vibration resulting from operations on the Marysville railway corridor, between Belleville and Napanee, Ontario.

In a decision issued in January 2012, the Agency found the noise and vibration from pass-by railway traffic to be reasonable but did not have enough information about crew change activities to assess this aspect of the complaint.

In June 2012, after a review of railway operations, the Agency determined that the noise and vibration from crew change activities were, in fact, not reasonable and ordered the carriers to implement a noise barrier along the tracks.

DECISION ISSUED: RAIL CONSTRUCTION AND INTERESTS OF THE LOCALITIES

Laying new railway track of any length can affect the localities through which the new track is to run. The Agency can only approve the construction of a railway line if it considers that its proposed location is reasonable. The Agency is taking into consideration requirements for railway operations and services, and the interests of the localities that will be affected by the railway line.

In 2012-2013, the Agency was involved in three ongoing applications for proposed railway line construction and issued one decision giving authority to construct railway lines.

Another four potential railway line construction projects required Agency involvement.

EFFECTIVE MEDIATION AND FACILITATION

PERFORMANCE TARGET

80% of rail disputes facilitated within 30 days

100% As of March 31, 2012

97% As of March 31, 2013

AGREEMENTS: CROSSINGS

This past year, the Agency processed 79 agreements filed by parties who had successfully conducted their own negotiations related to crossings. Once filed, these agreements became orders of the Agency. On four occasions when no agreement could be reached, the Agency was called upon by the parties involved to determine a fair and equitable resolution.

DECISIONS ISSUED: RAIL CONSTRUCTION AND ITS IMPACT ON THE ENVIRONMENT

Over the course of the year, in accordance with the *Canadian Environmental Assessment Act*, the Agency was involved in 23 environmental assessments, 13 of which were related to proposed railway line construction projects and 10 were related to road and utility crossings.

However, in June of this year, a new *Canadian Environmental Assessment Act*, 2012 (CEAA 2012) came into force. The Agency began the evaluation of the CSX's application for a railway line construction project under the previous legislation and completed it under the CEAA 2012.

RESOLVING MARINE DISPUTES

Marine disputes can involve user fees at ports, charges for pilotage services, or coasting trade applications for foreign or non-duty paid ships to work in Canadian waters.

The Agency examines marine complaints in the following areas:

- disputes related to coasting trade applications
- tariffs proposed by pilotage authorities
- fees fixed by port authorities
- final offer arbitration of northern resupply carrier disputes
- unreasonable price increases or reductions of service by a shipping conference

PROGRESS REPORT ON MARINE TRANSPORTATION

The Agency resolved 6 disputed coasting trade applications where a Canadian ship was offered. All of these were concluded within 90 days—well above the Agency's 80% target. These cases were moderately complex, and 3 resulted in the Agency ruling that a Canadian ship was suitable and available to perform the activity for which a foreign ship was proposed.

TIMELY DISPUTE RESOLUTION

PERFORMANCE TARGET

80% **of disputed coasting trade applications (with offers) resolved within 90 days**

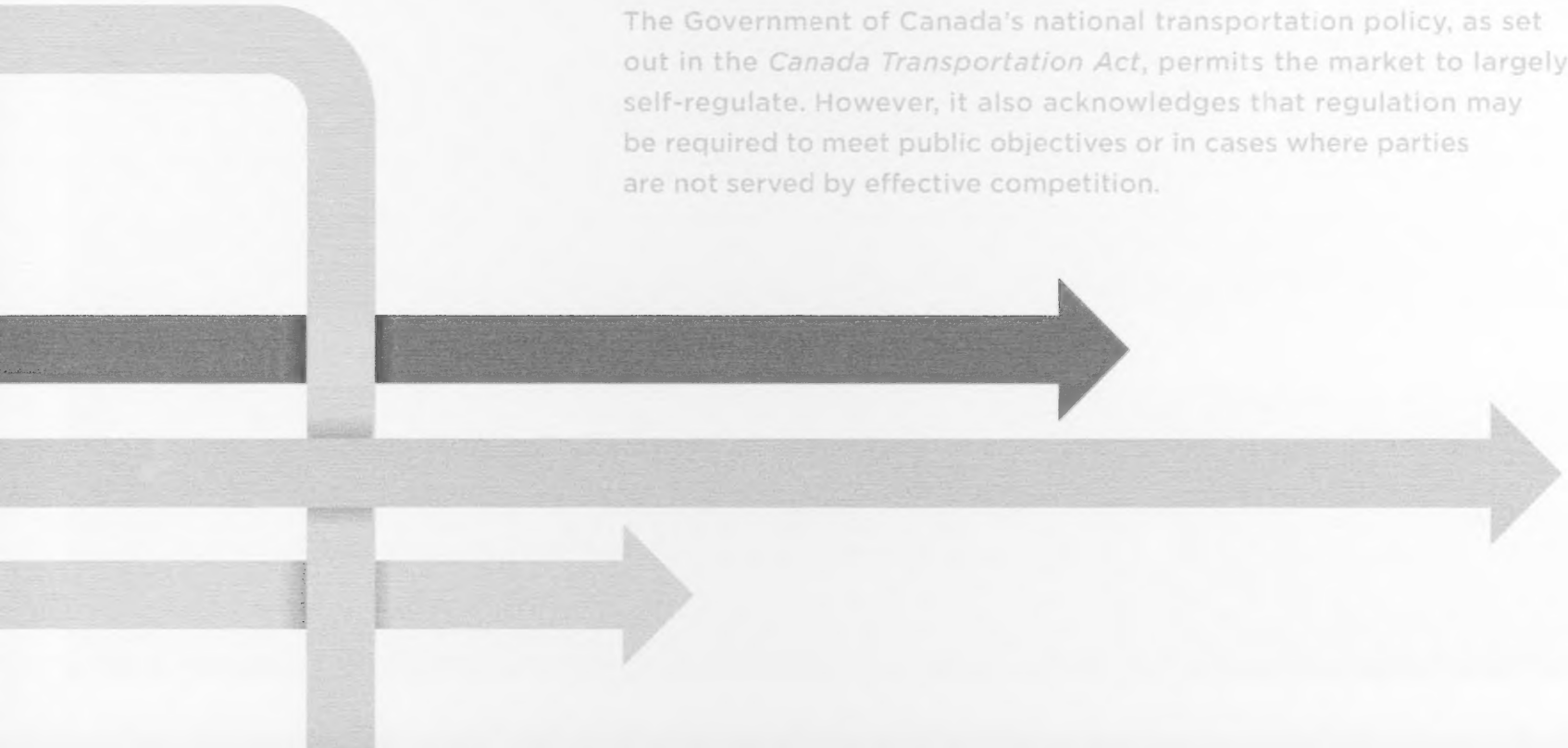
89% As of March 31, 2012

100% As of March 31, 2013

For more information on resolving marine disputes, go to cta.gc.ca/eng/marine-disputes

REGULATING THE INDUSTRY

The Government of Canada's national transportation policy, as set out in the *Canada Transportation Act*, permits the market to largely self-regulate. However, it also acknowledges that regulation may be required to meet public objectives or in cases where parties are not served by effective competition.



Within the specific powers assigned to it by legislation, the Agency participates in the economic regulation of modes of transportation under federal jurisdiction by:

- licensing air and rail carriers;
- participating in the negotiation and implementation of international air agreements;
- approving the adequacy of the protection of advance payments made by charter companies contracting with air carriers; and
- determining whether suitable Canadian ships are available to perform services in Canadian waters that a resident of Canada has requested be provided by a foreign ship.

On December 18, 2012, the *Air Transportation Regulations* were modified to include rules on all-inclusive air price advertising. The Agency drafted the new rules following extensive consultations, and is now responsible for applying them.

The Agency is also responsible for:

- determining whether terms and conditions of air travel are just and reasonable;
- setting railway revenue caps for moving western grain;
- establishing financial and costing frameworks for certain railways;
- setting interswitching rates to increase competitive options available to shippers;
- establishing the net salvage value of railway lines to facilitate their orderly transfer; and
- administering regulations and codes of practice regarding accessibility.

Our strategic outcome is to ensure that the Agency's regulatory and non-regulatory approaches and their administration are up-to-date, well understood and delivered effectively and efficiently.

STRATEGIC ACTION (TARGET: 2014)

Systematically review and update the Agency's regulations

COMPLETED

- Amendments to the *Air Transportation Regulations* for Air Services Price Advertising
- Amendments to *Railway Interswitching Regulations*

ONGOING

- Amendments to Parts I and II of *Air Transportation Regulations*
- Amendments to Parts III and IV of *Air Transportation Regulations*
- Amendments to the accessibility sections in Part VII of the *Air Transportation Regulations*
- Amendments to *Personnel Training for the Assistance of Persons with Disabilities Regulations*

STRATEGIC ACTION (TARGET: 2014)

Develop and update non-regulatory approaches to enhance transparency and understanding

COMPLETED

- New air services price advertising interpretation note and industry educational outreach
- Interpretation note on air carrier signage requirements for public inspection of tariffs
- New guidelines for the processing of extra-bilateral air authorities
- Methodology for a cost adjustment to the Western Grain Revenue Cap to reflect the decision of the Saskatchewan Grain Car Corporation to cease to provide CN and CP hopper cars free of ownership costs
- Guidelines for the determination of the net salvage value of railway lines
- New approach developed for considering exemptions from the prohibition to offer an air service without a licence
- New code of practice for the accessibility of non-National Airports System terminals produced
- New resource tool introduced for air, rail and ferry carriers regarding the carriage of mobility aids

ONGOING

- Update or develop Agency guidelines on:
  - Domestic licences for air transportation
  - Wet leases and code sharing for air carriers
- Update codes of practice for aircraft, ferry and rail passenger car accessibility

STRIVING FOR EFFICIENCY IN REGULATION

A modernized regulatory regime—comprising essential regulation, guidelines, codes of practice and their administration—more effectively aligns with the current transportation and government policy framework. It also ultimately:

- improves the transparency of the Agency's decision-making process;
- minimizes the need for unnecessary applications;
- facilitates the processing of applications;
- reduces the unnecessary burden on industry; and
- strengthens compliance.

The Agency is sensitive to the need to minimize the regulatory burden on Canadian businesses, and is actively committed to creating a more predictable regulatory environment that promotes economic growth. Over the past year, and consistent with the Government of Canada's Red Tape Reduction Action Plan, the Agency has continued to ensure that it is:

- taking responsible steps to minimize the regulatory burden on Canadian businesses;
- providing clarity regarding the interpretation of regulations the Agency administers;
- sharing information on its forward regulatory plan and initiatives; and
- improving service and predictability.

To ensure that stakeholders are able to find guidance on how the Agency interprets regulations, the Agency has developed and published a suite of interpretation notes and other guidance material. These documents aim to bring increased transparency and predictability to the regulatory process by providing businesses with information on how they are to meet regulatory requirements.

Efforts are being made to reach out to as broad a business audience as possible through targeted consultations, stakeholder meetings, speaking engagements and innovative web-based live question and answer sessions with Agency staff.

Through such consultations, the Agency has consistently kept stakeholders informed of its intended regulatory initiatives and sought their comments on proposed interpretation documents. In support of the federal government's commitment to open government, the Agency now also makes its forward regulatory plan publicly available on the web. These plans describe upcoming regulatory proposals that we plan to introduce over a 24-month period, and provide advance notice of the government's intent to regulate or change existing regulations, thereby creating a more predictable regulatory environment so businesses and Canadians can plan ahead.

STRATEGIC ACTION (TARGET: 2014)

Streamline the Agency's regulatory administrative processes

ONGOING

- Review and streamline regulatory applications, licensing and permitting processes
- Provide new and updated guidelines and tools that describe the Agency's processes and information needs
- Implement e-service channels for online delivery of regulatory services

The Agency is also committed to streamlining its business processes, and is currently working on a multi-year initiative to review each of its processes. As of 2012-2013, the Agency has completed reviews of two of its highest-volume regulatory processes: the air licensing and air charter application processes. The Agency has also played a key role, with other departments and agencies, in the process leading to the acquisition of a cross-government shared case management system, and has been selected to pilot two business processes in support of this joint initiative.

In addition, the Agency has worked to increase predictability in the regulatory system since 2007, when it implemented service standards for many of its key services, such as regulatory authorizations, that specifically address the timeliness of decision making and approvals.

Results against these measures are published each year in this report, as well as on our web site, for transportation industry clients and stakeholders. They allow us to track how closely our objectives are being met and to implement continuous improvements to enable us to meet the accountability expectations of Parliament and Canadians.

For more on regulation, go to cta.gc.ca/eng/industry

"Your considerable efforts to render the authorizations as promptly as possible have made it possible for our clients to commence work prior to the upcoming nesting season [...] and thus not lose the construction season this year."
– David F. Blair, Heenan Blaikie Aubut law firm

REGULATING THE ACCESSIBILITY OF TRANSPORTATION

In addition to resolving individual complaints, the Agency removes undue obstacles to the mobility of persons with disabilities on a systemic basis by regulating the accessibility of passenger transportation via air, rail and extra-provincial ferry and bus. It also regulates the training of service provider personnel to assist travellers with disabilities.

The Agency works to make the federal transportation network more accessible through regulations, the design and promotion of codes of practice and technical guidelines, as well as through proactive communications and outreach to all stakeholders.

PUBLISHED: RESOURCE TOOL FOR THE CARRIAGE OF MOBILITY AIDS

Demographic trends such as an aging population mean that more and more Canadians are now travelling with mobility aids. The Agency is committed to ensuring they receive the accommodation they need and deserve.

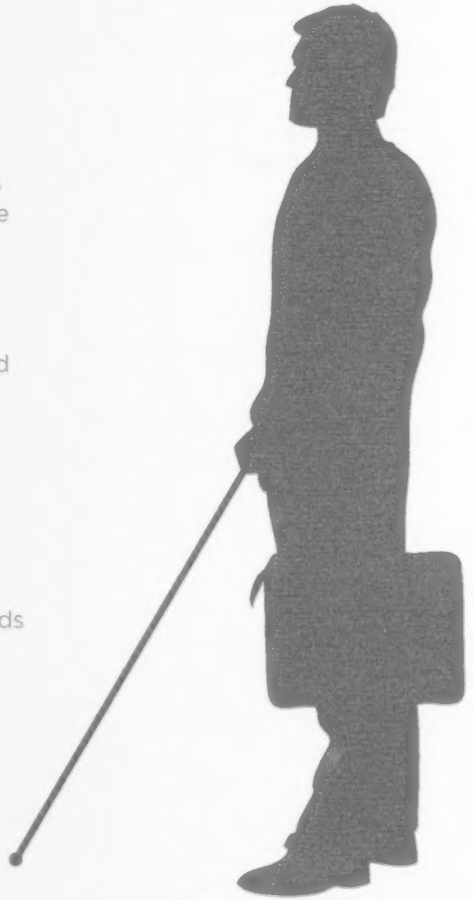
This past year, we published a new resource tool—*Carriage of Mobility Aids On Board Planes, Trains and Ferries*—containing detailed information for travellers, travel agents and service providers on how to plan travel with a mobility aid, Canadian standards and regulations for accessible transportation and carriers' current policies and procedures.

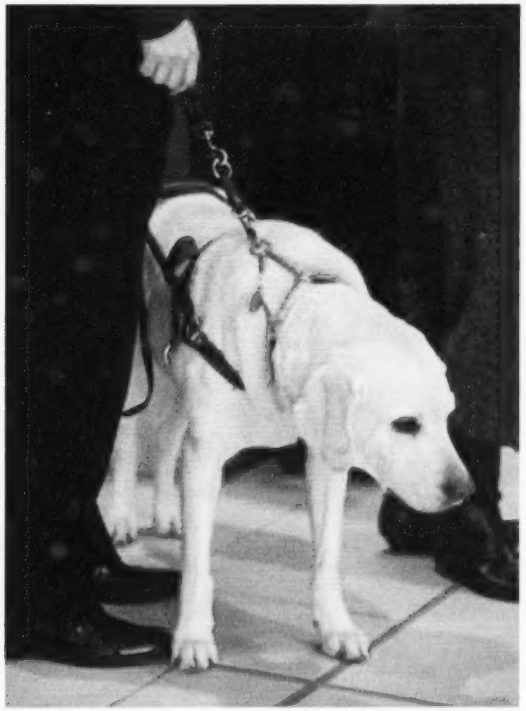
PUBLISHED: TRAINING MATERIALS FOR ASSISTING PERSONS WITH DISABILITIES

The Agency created e-learning materials to help carriers and terminal operators train their staff and contracted personnel on how to assist persons with disabilities. The standards for these services are set out in the *Personnel Training for the Assistance of Persons with Disabilities Regulations* and the Agency's codes of practice.

The materials will enable employees and contracted personnel to:

- Understand the needs relating to various types of disabilities;
- Communicate effectively and sensitively with passengers with disabilities; and
- Deliver the necessary service to passengers with disabilities.





PUBLISHED: CODE OF PRACTICE AND RESOURCE TOOL FOR NON-NAS TERMINALS

The Agency's codes of practice help transportation service providers meet the needs of travellers with disabilities.

In March 2013, the Agency published a code of practice for smaller airports that are not part of the National Airports System (NAS).

The Agency already has a code of practice for NAS terminals, which comprise 26 airports from coast to coast and handle 94% of air travellers in Canada.

The new code of practice for non-NAS terminals will apply to airports that serve more than 10,000 passengers each year—over 90 terminals across the country. It has information about the physical aspects of terminals, disability-related services, personnel training and communication. A companion resource tool provides examples of best practices and tips to make facilities more accessible to persons with disabilities.

UPDATED: INTERNATIONAL ACCESSIBILITY STANDARDS FOR AIR TRAVEL

In light of its expertise in developing regulatory and voluntary accessibility standards for Canada's transportation system, the Agency led an international working group in drafting updates to the International Civil Aviation Organization's world-wide accessibility standards and recommended practices.

As the leader of the Working Group on Persons with Disabilities, the Agency guided the development of a comprehensive manual for the civil aviation community to help them implement the standards and practices. The manual can also be used as a reference for countries that are developing or expanding accessible transportation programs.

REGULATING CANADA'S AIR CARRIERS

When it comes to regulating air transportation, the Agency is responsible for:

- issuing licences, authorities and charter permits to Canadian and foreign air carriers offering services to the public;
- participating in the negotiation and implementation of international air transport agreements as part of the Government of Canada negotiating team; and
- regulating international air tariffs according to bilateral air transport agreements and Canada's *Air Transportation Regulations*.

The Agency also ensures consistency with Canadian legislation and regulations, including with respect to air fares, rates and charges, terms and conditions of carriage, and code sharing, wet leasing and charters.

REGULATION: ALL-INCLUSIVE AIR PRICE ADVERTISING

In December 2012, amendments to the *Air Transportation Regulations* came into effect, which require air carriers, travel agencies and other advertisers of air prices to include all fees and taxes in their advertised prices.

These regulatory amendments support two key objectives:

- to enable consumers to readily determine the total price of an advertised air service; and
- to promote fair competition among all advertisers in the air travel industry.

TIMELY REGULATORY DETERMINATIONS

PERFORMANCE TARGET

92% **of charter permits and amendments issued within 30 days of receipt of application**

92% As of March 31, 2012

97% As of March 31, 2013

PUBLISHED: EDUCATIONAL MATERIAL ON AIR SERVICES PRICE ADVERTISING

In order to support industry's efforts to comply with the regulatory change on air price advertising, the Agency created educational materials, including an interpretation note, a brochure, questions and answers, as well as examples of compliant and non-compliant advertisements. Agency staff also held information sessions and produced a web-based video presentation to help guide air price advertisers.

The Agency continues to work with the industry to ensure that advertisers understand all of the regulatory requirements.

CONSULTATION: BAGGAGE RULES

Across the international airline industry, carriers' approaches to applying baggage rules have become inconsistent due to several factors, including: à la carte pricing, regulatory change and carriers' desire to maximize revenue from baggage.

Two separate approaches for the application of baggage rules for checked and unchecked baggage have emerged: the one adopted by the International Air Transport Association, and another adopted by the US Department of Transportation.

As Canada does not have a formal practice for the application of baggage rules (other than for code sharing arrangements), the Agency is holding consultations with the public and industry to inform its decision on an approach that would apply to transportation of baggage to, from and within Canada. The Agency expects to make a decision by fall 2013.

PUBLISHED: INTERPRETATION NOTE ON AIR CARRIER SIGNAGE REQUIREMENTS FOR PUBLIC INSPECTION OF TARIFFS

Air carriers must make their terms and conditions of carriage (tariffs) available to the public, and must also prominently display signs at their business offices (and on their website if they sell services on-line) to indicate that their tariffs are available for public review. This requirement ensures that air travellers are aware of their rights, and that air carriers are transparent and accountable.

To help air carriers meet their tariff signage obligations, the Agency published an interpretation note which also contains useful information for airport authorities about the legislated duty imposed on their air carrier tenants.

For more information on tariffs, go to cta.gc.ca/eng/tariffs

For more information on the Agency's air licensing activities, including an air carrier licence search tool, go to cta.gc.ca/eng/licensing

PUBLISHED: NOTICE TO INDUSTRY ON EXEMPTIONS FROM SECTION 59 OF THE ACT

Section 59 of the *Canada Transportation Act* protects consumers by prohibiting an air carrier from selling an air service until it obtains an Agency licence for that service. If a carrier is ultimately not licensed, or not licensed in time, the consumer will not be left out of pocket or experience difficulties because the carrier cannot operate the service.

However, the Agency recognizes that, in some cases, the risk posed by a carrier selling tickets before obtaining a licence may be minimal. Therefore, the Agency can grant an exemption from section 59.

To ensure it is being clear and predictable, the Agency has published a notice to the industry to explain the factors it considers for granting an exemption.

TIMELY REGULATORY DETERMINATIONS

PERFORMANCE TARGET

90% **of air licences issued within 14 days of receipt of complete application**

94% As of March 31, 2012

96% As of March 31, 2013

CONSULTATION: UPDATING CANADA'S *AIR TRANSPORTATION REGULATIONS*

The Agency is continuing work on a major initiative to update the *Air Transportation Regulations* that govern the implementation of Part II of the *Canada Transportation Act*.

The regulations are being updated in three phases, with stakeholder consultations during each phase. The first series of proposed updates deal with financial requirements, provision of aircraft with flight crew, and conditions of domestic and international licences. The Agency has concluded this phase and is now moving forward to bring these amendments to the regulations into force.

APPLICATIONS: LICENSING

The Agency licenses Canadian applicants to operate air services within Canada. It also licenses Canadian and foreign applicants to operate scheduled or non-scheduled international air services to and from Canada.

The Agency processed 845 air licensing activities over the course of 2012-2013, including applications for new licences, cancellations, suspensions, and reinstatements.

The Agency continues to maintain a licensing regime that ensures that publicly available air services:

- meet the applicable Canadian air ownership and control requirements;
- have the prescribed liability insurance;
- meet certain financial requirements when they start operations, if they are Canadian; and
- hold a Canadian aviation document issued by Transport Canada.

ALL 123 APPLICATIONS FOR NEW LICENCES PROCESSED IN 2012-2013 RESULTED IN LICENCES BEING ISSUED.

Of these,

32 were issued to **4** Canadian applicants for the operation of a scheduled international service using large aircraft between Canada and a foreign country.

NEW LICENCES WERE ISSUED FOR SERVICES BETWEEN

CANADIAN AIRLINE →	COUNTRY
AIR TRANSAT →	Antigua and Barbuda, Sint Maarten, Barbados, Costa Rica, Nicaragua, Colombia, El Salvador and Saint Lucia.
AIR CANADA →	Colombia, Rwanda, South Africa, Senegal, Curaçao, Sint Maarten, Sierra Leone, Kenya, Bangladesh, Pakistan, Tanzania, Oman, Israel and Bahrain.
CANJET →	Antigua and Barbuda, Sint Maarten, Barbados, Saint Lucia, The European Community and Costa Rica.
WESTJET →	Sint Maarten, Antigua and Barbuda, Costa Rica and Curaçao.

For more on the regulation of Canada's air transportation sector, go to cta.gc.ca/eng/air-industry

To learn more about charter permits, go to cta.gc.ca/eng/charters

For more on the Agency's role in bilateral relations, go to cta.gc.ca/eng/bilateral

APPLICATIONS: CANADIAN OWNERSHIP AND CONTROL

The Agency reviewed 48 Canadian licence applicants already operating or proposing to operate domestic or international air services in 2012-2013. After verifying that the companies were incorporated in Canada, that at least 75% of their voting interests were owned and controlled by Canadians, and that they were controlled in fact by Canadians, the Agency approved all 48 applications.

The Agency also completed 3 additional major investigations of existing licensees. The first was an Agency inquiry into the Canadian status of Sunwing Airlines Inc. following the receipt by the Agency of allegations that the licensee, who had a significant foreign ownership interest, no longer met the Canadian ownership and control requirement. The Agency determined that Sunwing Airlines Inc. continued to meet the Canadian ownership and control requirement.

The second was a request by Cougar Helicopters Inc. for an advance determination as to whether they would continue to meet the Canadian ownership and control requirement following a proposed significant minority investment in the licensee by a non-Canadian entity. The Agency determined that, after the initial proposed investment was renegotiated to address certain Agency concerns, Cougar Helicopters Inc. would continue to meet the Canadian ownership and control requirement.

The third was a request by Alpine Helicopters Inc. for an advance determination as to whether after a corporate restructuring, where it would assume the operations of Alpine Helicopters Ltd, a non-Canadian company operating under a Minister of Transport order exempting it from the Canadian ownership and control requirement, would be Canadian. The Agency determined that, after Alpine Helicopters Inc. made changes to its corporate structure to address certain Agency concerns, it would meet the Canadian ownership and control requirement.

REVIEWS: FINANCIAL FITNESS

In 2012-2013, the Agency completed 3 reviews of the financial fitness of Canadian applicants seeking to offer domestic or international services using aircraft with more than 39 seats.

The purpose was to ensure that the applicants had a reasonable chance of success, which minimizes disruptions in service and protects consumers. Three applications were approved by the Agency.

AGREEMENTS: BILATERAL AIR TRANSPORTATION

In 2012-2013, the Agency participated in 11 successful negotiations, namely with India, Sierra Leone, Kenya, Senegal, Bangladesh, Burkina Faso, Saudi Arabia, Bahrain, The Gambia, Paraguay and Uruguay. As well as the successful negotiations, consultations or preliminary negotiations were held with 7 other countries.

REGULATING CANADA'S RAIL CARRIERS

The Agency sets the railway revenue caps for the Canadian Pacific Railway Company (CP) and the Canadian National Railway Company (CN) for the movement of western grain and the regulated railway interswitching rates. It also processes applications for certificates of fitness for the proposed construction and operation of railways, and approvals for railway line construction.

PUBLISHED: NET SALVAGE VALUE GUIDELINES

When a railway company seeks to discontinue use of a railway line, the Agency can be called upon to assist in the process by determining the net salvage value (NSV) of the railway assets.

Following a consultation with targeted stakeholders, the Agency published *Guidelines Respecting Net Salvage Value Applications* to inform and assist parties who are or could become involved in an NSV application.

UPDATED: INTERSWITCHING REGULATIONS

A shipper can have its cars interswitched from one carrier to another at prescribed rates if the shipper's siding is within a certain distance of the interchange point. This gives the shipper a broader choice of carriers, even if it only has direct access to a single rail carrier.

The Agency is responsible for setting the terms and conditions for interswitching, determining the rate charged per car and establishing distance zones.

Following broad consultations, the Agency has updated the *Railway Interswitching Regulations* to ensure that the interswitching rates more accurately reflect the costs incurred by railway companies. The Agency is required to update the regulations at least every five years.

CONSULTATION: AMENDMENTS TO THE UNIFORM CLASSIFICATION OF ACCOUNTS

As an economic regulator, the Agency issues a number of railway-related cost determinations based on data supplied by railway companies. The *Uniform Classification of Accounts and Related Railway Records* (UCA) sets out accounting guidelines and instructions for reporting this information to the Agency.

TIMELY REGULATORY DETERMINATIONS

PERFORMANCE TARGET

95% of rail determinations issued within 120 days

100% As of March 31, 2012

100% As of March 31, 2013

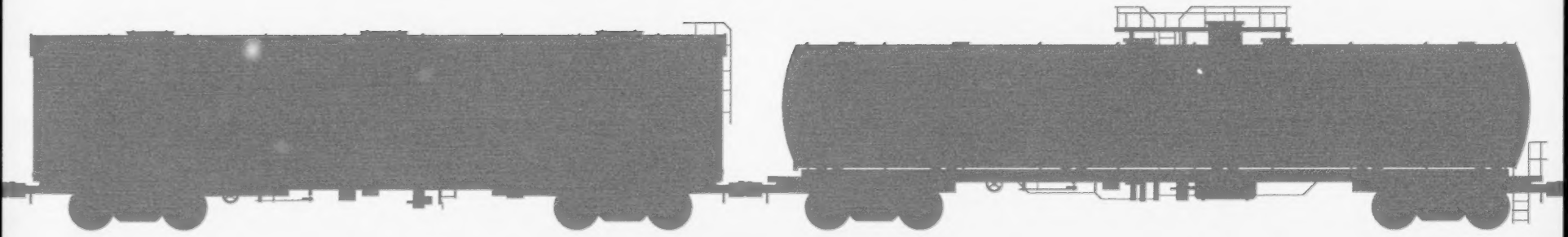
For a list of federally-regulated railway companies, go to cta.gc.ca/eng/rail-industry

Although there were limited revisions in 2009 and 2010, the last substantive revision to the UCA was completed in 1998. The current review will align the UCA more closely with current industry practice and regulatory requirements.

Following extensive consultations with stakeholders, the modernized UCA will be published by the end of 2013.

DETERMINED: RAILWAY REVENUES (CROP YEAR 2011-2012)

In December 2012, the Agency announced that CN and CP's revenues for the movement of western grain had exceeded their revenue caps for crop year 2011-2012 by less than 0.1 percent. CN's grain revenue of $542,756,316 was $240,185 above its cap of $542,516,131. CP's grain revenue of $494,436,705 was $400,132 above its cap of $494,036,573.



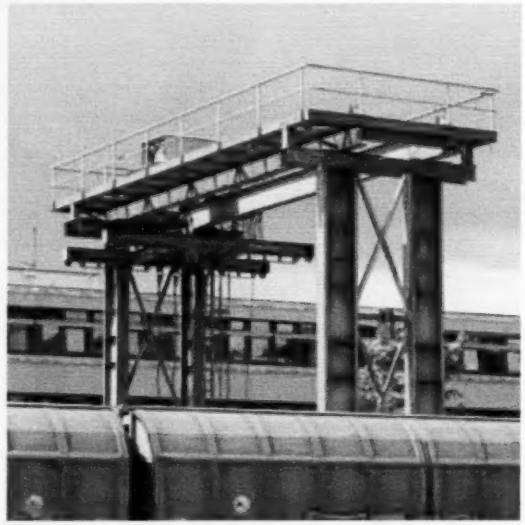
DETERMINED: INCREASE IN REVENUE CAP INFLATION FACTOR (CROP YEAR 2012-2013)

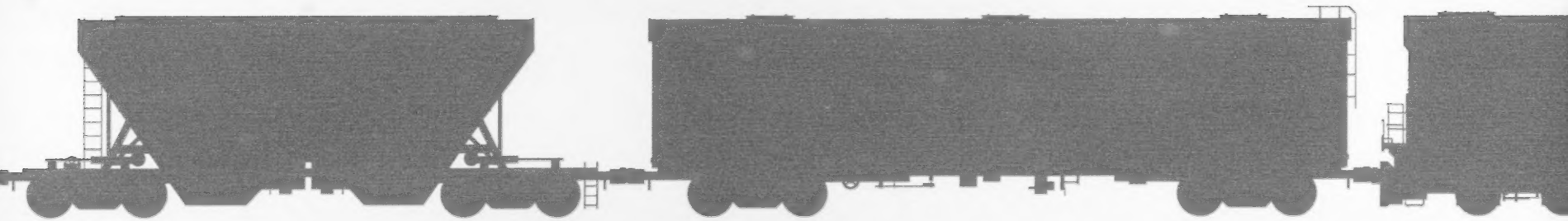
In April 2012, the Agency announced a 9.5% increase in the Volume-Related Composite Price Index (VRCPI)—essentially an inflation facto—for CN's and CP's revenue caps for the movement of western grain.

The VRCPI determination for crop year 2012-2013 reflects the impact of recent Agency decisions on methodologies for determining the cost of capital and recognizing pension costs. The impact from these decisions on the VRCPI is 3.3% and 4.6%, respectively.

An additional 0.2% increase was made to the VCRPI in January 2013, following requests from CN and CP for an adjustment to account for the Saskatchewan Grain Car Corporation's decision to stop providing them with hopper cars free of ownership costs.

These decisions set the index at 1.2919 for the 2012-2013 crop year beginning August 1, 2012.





REGULATING CANADA'S MARINE INDUSTRY

The Agency determines if Canadian ships are suitable and available to operate commercial services in Canadian waters, which may otherwise be provided by foreign or non-duty paid ships upon request by a resident of Canada.

PROGRESS REPORT ON MARINE REGULATION

In 2012-2013, the Agency received 85 coasting trade applications for which no offer of a Canadian vessel was made. In 5 of these cases, the offer was withdrawn.

TIMELY REGULATORY DETERMINATIONS

PERFORMANCE TARGET

95% of coasting trade applications processed prior to activities commencement date (no objections)

95% As of March 31, 2012

96% As of March 31, 2013

For detailed statistics regarding coasting trade applications, go to cta.gc.ca/eng/statistics

ENSURING COMPLIANCE

ENFORCEMENT

The Agency's enforcement officers ensure compliance among transportation service providers subject to the *Canada Transportation Act*, the *Air Transportation Regulations* and the *Personnel Training for the Assistance of Persons with Disabilities Regulations*.

The Agency has generally found Canadian companies extremely cooperative and constructive in finding ways to ensure compliance.

Agency enforcement officers may, however, use their powers to levy fines until compliance is achieved.

IN 2012-2013, AGENCY ENFORCEMENT STAFF UNDERTOOK 254 INSPECTIONS, AND COMPLETED 40 INVESTIGATIONS.

Of these,

- **123** resulted in informal warnings;
- **37** resulted in formal warnings; and
- **6** notices of violation were issued.

TIMELY REGULATORY DETERMINATIONS

PERFORMANCE TARGET

100% compliance with targeted inspections on accessibility requirements as outlined in the *Personnel Training for the Assistance of Persons with Disabilities Regulations*

100% As of March 31, 2012

100% As of March 31, 2013

STRATEGIC ACTION (TARGET: 2014)

Enhance regulatory compliance through voluntary and non-voluntary means

ONGOING

→ Enforcement activities of the Agency are risk-based and focus on ongoing compliance with regulatory requirements and specific Agency priorities

For more on the Agency's enforcement activities, go to cta.gc.ca/eng/enforcement

For detailed statistics on enforcement, go to cta.gc.ca/eng/statistics

ENSURING COMPLIANCE WITH ALL-INCLUSIVE AIR PRICE ADVERTISING

In December 2012, amendments to the *Air Transportation Regulations* came into effect, requiring air carriers, travel agents and other air price advertisers to implement all-inclusive air price advertising for travel within, or originating in Canada, through any media.

Early success in achieving a high level of industry compliance can be attributed in large part to the Agency's collaborative approach to, and relationship with, air price advertisers.

The Agency intends to use penalties only when necessary to achieve full compliance. The Agency can impose fines of up to $5,000 for an individual and $25,000 for a corporation, if they are found guilty of a contravention. The Agency can also order a person or company to make the changes necessary to comply with the regulations.

MONITORING

In addition to enforcement methods, the Agency ensures compliance by monitoring the federal transportation industry. The Agency conducts periodic assessments of compliance with its rulings, regulations and voluntary codes of practice. Agency staff then work closely with industry and other parties to assist them in any areas where compliance has not been achieved.

Over the past year, the Agency conducted activities to monitor compliance with some of its codes of practice. Reports on these findings will be published in 2013-2014.

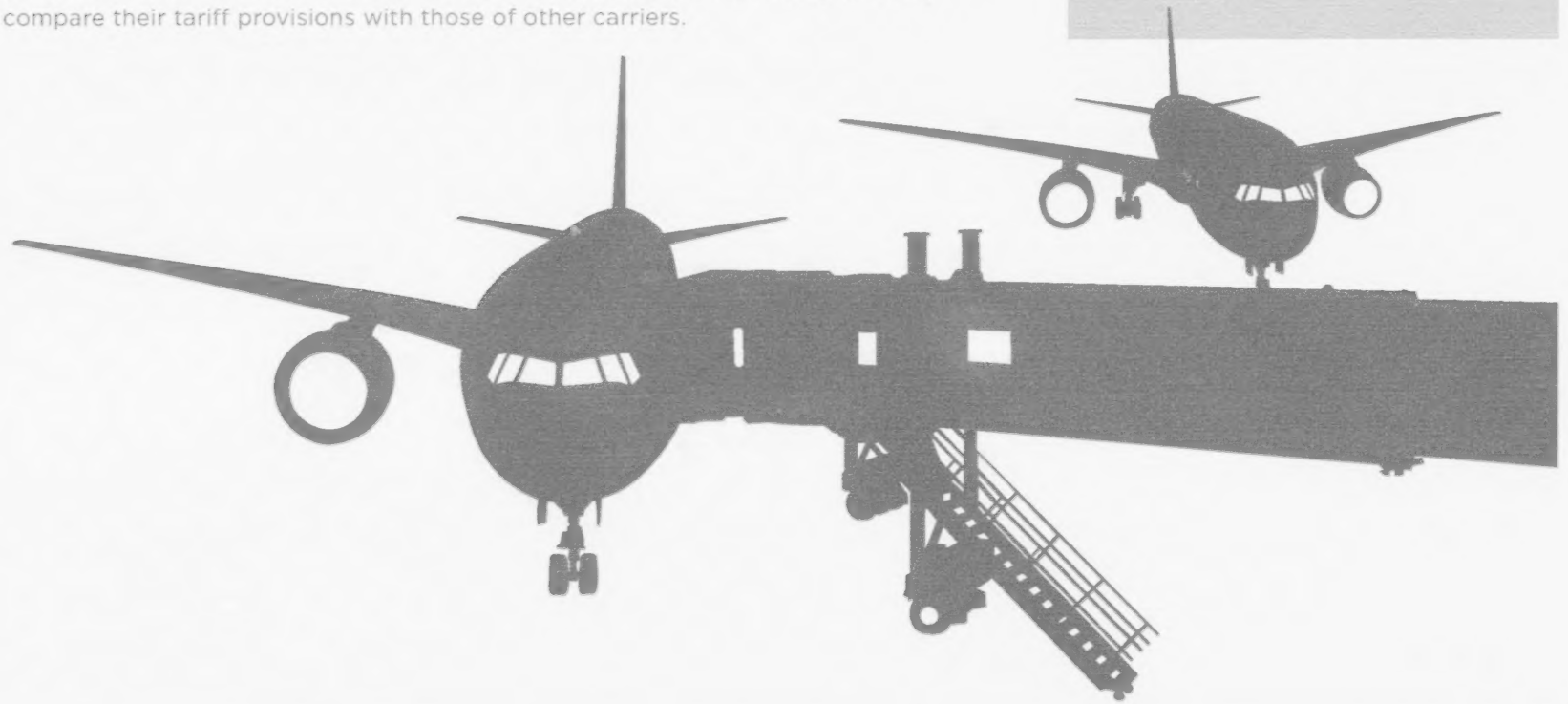
PUBLISHED: TARIFF REPOSITORY

Under Canadian law, all air carriers are required to have tariffs—their contract with their passengers—and to make them available to the public. The Agency enforces the application of tariffs and hears complaints from passengers that a tariff provision is not being applied, or is unreasonable or unjust.

The Agency created an online repository of links to major airlines' tariffs, enabling passengers to read about their rights and responsibilities when travelling and helping them make more informed choices. Carriers can also use the repository to easily compare their tariff provisions with those of other carriers.

To read the compliance summary report, go to cta.gc.ca/eng/compliance

To learn more about the codes of practice for transportation service providers, go to cta.gc.ca/eng/codes-of-practice



ASSESSMENT OF THE ACT

The *Canada Transportation Act* is the Agency's enabling statute to implement prescribed economic elements of the federal government's transportation policies.

ONGOING MONITORING OF THE *CANADA TRANSPORTATION ACT*

The following table provides the Agency's assessment of the operation of this Act based on activities of the Agency, including applications before it and its findings on them. Specifically, it highlights the difficulties observed by the Agency in the administration of this Act and provides its views on possible approaches to address these issues for consideration of Parliament. Several of these difficulties have previously been included in the Agency's annual reports to Parliament.

The Agency's regulations, codes of practice and guidelines are the principal instruments by which the provisions of the Act are applied in the everyday context of the federal transportation sector. However, while regulations can support the functioning of efficient, fair markets, they can also prove unduly burdensome if poorly designed or implemented. In addition to its ongoing responsibility to monitor the Act and guided by the Government of Canada's Red Tape Reduction Action Plan and Cabinet Directive on Streamlining Regulation, the Agency also engages in ongoing assessments of its regulatory regime to ensure that it is streamlined and reflective of the evolution of government policy, the transportation industry and Agency practices. Several consultations have already been undertaken in this regard, which have been noted in this Annual Report.

To ensure effective administration of its enabling legislation, the Agency monitors all aspects of the operation of this Act on an ongoing basis. The Act requires the Agency to assess the operation of, and any difficulties observed in, the administration of this Act and to report its findings to Parliament through its Annual Report.

RAIL TRANSPORTATION

Topic: Railway line transfers and discontinuances

Description: The Agency and the Federal Court of Appeal have rendered significant decisions concerning the determination of the net salvage value (NSV) of rail lines.

In a judgment of the Federal Court of Appeal regarding a Decision of the Agency (Decision No. 383-R-2007) under subsection 144(3.1) of the Act, the Court clarified jurisprudence on NSV determinations by ruling that Division V of the Act is a complete code and operates according to definite timelines that cannot be modified by the Agency.

Assessment: The Agency has no discretion to modify the timeline established for the completion of the discontinuance and abandonment process, and, in particular, within the 6-month period foreseen under subsection 144(4) of the Act. Accordingly, it is likely that the Agency will encounter difficulties completing the NSV of rail lines under this subsection within the timelines prescribed in the Act when there are difficult issues to be resolved, such as the assessment of environmental remediation costs or when winter weather conditions prevent the inspection of a railway line to assess track conditions. This may, in some cases, prevent the Agency from rendering the services it has been instructed by Parliament to provide to the parties involved.

Parliament may wish to consider whether there are exceptional circumstances under which the Agency should be allowed to extend the timelines set in Division V of the Act to meet the intent of legislation and ensure the application of procedural fairness.

Topic: Power to order parties to produce reports at their cost

Description: Sections 144 to 146 of the Act require the Agency to provide a service to determine net salvage value. However, there is no explicit legislative requirement for parties involved to undertake studies in order to provide necessary information for the Agency to make an informed and full determination.

Such studies may involve evaluations, environmental assessments or technical reports. While the Agency may request such information, and has the legislative authority to ensure it is reimbursed for its costs by the applicant under subsections 144(3.1) and 146.3(1), there is no clear requirement on the part of the parties under subsections 145(5) or 146.2(7) to pay for the costs of studies requested by the Agency to support its decision-making process. The costs associated can be substantial. The Agency, however, is still expected to make a determination with or without this information.

In a recent case, the Agency decided to request that studies be performed to enable it to make a ruling. This decision led to the creation of new procedures on the allocation of related costs among the parties involved. While the procedure was successful in that case, there is still no clear obligation on the part of the parties to provide the information required by the Agency, nor to cover the costs in the case of determinations under subsections 145(5) or 146.2(7) of the Act.

Assessment: A modification to the Act could serve to clarify that the Agency can order a party or parties to produce necessary studies at their cost (and to determine the apportionment of costs between the parties where appropriate), or to reimburse costs incurred by the Agency to obtain the necessary studies.

AIR TRANSPORTATION

Topic: Authority to investigate and suspend unreasonable domestic tariff provisions

Description: Sections 67.1 and 67.2 limit the Agency's authority to cases where a complaint has been received, thereby limiting the Agency's ability to conduct investigations concerning a carrier's adherence to its domestic tariff and the reasonableness of a carrier's terms and conditions of domestic carriage.

There are no similar complaint-driven constraints in respect of international tariffs. This means that a decision requiring a carrier to change its international tariff because it has been determined to be unreasonable cannot be extended to the equivalent domestic tariff unless there has been a specific complaint about the domestic tariff. However, should the Agency find a domestic tariff provision unreasonable, it can order changes to be made to a carrier's domestic tariff while also ensuring these are reflected in the carrier's international tariff.

Subsection 67.2(1) of the Act allows the Agency to suspend a domestic tariff against which a complaint has been filed, but only after the Agency has first determined that the tariff is unreasonable. This differs from the international regime where the Agency has the ability to suspend an international tariff pending the results of its investigation and decision on the matter.

Over the years, the Agency has received several complaints that relate concurrently to both domestic and international carriage, and has suspended the international condition at issue pending investigation, while the domestic condition remains in effect.

Assessment: The inability of the Agency to take action on its own motion regarding domestic tariffs can result in unequal treatment between domestic and international air travellers and increases the complexity of compliance for industry. It can also create confusion for passengers when dealing with the same air carrier, since different rules may apply for domestic and international legs of a flight.

A potential solution to avoid such confusion would be to allow the Agency to broaden its review to include the domestic tariff when investigating an international tariff provision, whether the investigation is of its own initiative or as a result of a consumer complaint. This could provide consistency in approach and eliminate situations where the Agency has found an international tariff to be unreasonable, but can take no action against the same provision domestically with the same carrier.

Allowing the Agency to also suspend a potentially unreasonable domestic tariff provision pending its determination, in cases when it has taken similar action for the same international tariff provision,

could also potentially eliminate an inconsistency that can confuse consumers.

Topic: Authority to address systemic issues related to international tariffs

Description: In exercising its jurisdiction as one of the Canadian aeronautical authorities to address the issue of non-compliance with Canadian law (e.g., the Montreal Convention), the Agency can act on its own motion as it deals with an international tariff. However, such matters must currently be addressed on a carrier-by-carrier basis.

To obtain consistency, based on existing legislation, Agency staff must launch processes with each and every carrier individually. The Agency regulates hundreds of carriers operating international air services and tariffs typically contain many pages of legal text addressing liability matters.

Assessment: The legal framework governing the Agency's activities in respect of air transportation requires that tariffs be just and reasonable, and to be such, tariffs must comply with Canadian law, both domestically and internationally.

Allowing the Agency to address systemic issues of non-compliance with international conventions and Canadian law on a systemic basis would provide the Agency with additional leverage and methods to compel all non-compliant carriers to comply with Canadian law.

One approach to dealing with this issue may be to provide the Agency with the power to substitute or suspend terms and conditions of air carriage for all, or a group of, carriers and allow the Agency to issue an order applying to all air carriers to implement tariffs consistent with Canadian law and international conventions signed by Canada. Such an order, if disregarded by those carriers not in compliance with Canadian law, could be enforced by administrative monetary penalties.

It is the Agency's view that such an approach, while ensuring fairness among carriers, would also enable more efficient and effective enforcement of Canadian law.

Topic: Investigation of systemic air transportation-related matters

Description: The Agency has the discretion to act on its own motion with respect to international air transportation tariffs on a carrier by carrier basis. However, the Act only allows the Agency to investigate all other air-related matters on complaint. In all instances, the Agency's power to order remedies is limited to the carrier that is the subject of an international tariffs investigation or the respondent to a complaint.

While individual issues are effectively resolved through the complaint adjudication process, it is clear that in some cases, the issue goes beyond any particular carrier and may suggest a systemic problem. For example, in cases related to accessibility for persons with disabilities:

- Undue obstacles related to industry-wide policies or practices can only be resolved with the carrier named in the complaint. Persons with disabilities may continue to encounter the same undue obstacles with other service providers.

→ Decisions placing requirements to remove undue obstacles to accessibility on only one or some service providers can create significant competitive cost and/or operational disadvantages among providers. Agency consultations held with air transportation providers have consistently highlighted concerns regarding individual remedies and a preference for levelling the playing field where systemic issues are concerned.

Examples of past systemic issues brought forward on complaint include the one-person-one-fare policy and the provision of oxygen on board aircraft and, more recently, matters related to the carriage of passengers with allergies aboard aircraft.

As well, a complaint may be filed against a carrier's policies which may have a broad public interest component, but due to the nature of the complaint, the Agency is limited as to what it can investigate.

Assessment: Parliament may wish to consider a legislative amendment giving the Agency the discretion, under certain conditions and when it is determined to be appropriate, to properly and judiciously define the scope of a case in order to investigate issues raised in a complaint on an appropriate basis (be it industry-wide or limited to a sector of the industry). Any remedies or orders flowing from such an investigation would also be applied on an appropriate basis, industry-wide or focusing on a narrower sector. Such an amendment could enable the Agency to more effectively review issues that have broad implications for stakeholders, while not necessarily placing individual transportation service providers at an unfair competitive disadvantage. It would also allow the Agency to stay an application that has ramifications for an entire sector while it completes a thorough investigation.

Having the flexibility to investigate known broader issues at the beginning of a process rather than having to wait for further complaints would allow for greater efficiency.

To preserve the integrity of the Agency's quasi-judicial adjudicative process, including undue hardship analysis in the case of accessibility disputes, any orders issued by the Agency would be applied on an individual service provider basis. This would only be done after ensuring interests are fully considered and weighed and after taking into consideration the operational and economic circumstances of each of the individual service providers.

The current jurisdiction of the Agency limits its ability to expand the scope of its investigation into accessibility issues when it is appropriate to do so, thereby placing limits on the Agency's ability to act effectively and consistently.

ACCESSIBLE TRANSPORTATION

Topic: Jurisdictional overlap with the *Canadian Human Rights Act*

Description: The Canadian Transportation Agency, the Canadian Human Rights Commission (CHRC) and the Canadian Human Rights Tribunal (CHRT) have the power under their respective legislation to address complaints by persons with

disabilities regarding the accessibility of the federal transportation system.

Sections 170 and 172 of the *Canada Transportation Act* explicitly set out the mandate of the Agency to ensure that undue obstacles to the mobility of persons, including persons with disabilities, are removed from federally-regulated transportation services and facilities.

In 2007, the Supreme Court of Canada confirmed that Part V of the *Canada Transportation Act* is human rights legislation and that the principles of the *Canadian Human Rights Act* must be applied by the Agency when it identifies and remedies undue obstacles. The Supreme Court also acknowledged that the Agency uniquely has the specialized expertise to balance the requirements of persons with disabilities with the practical realities—financial, structural and logistic—of the federal transportation system.

Section 171 of the Act requires the Agency and the CHRC to coordinate their activities in order to avoid jurisdictional conflict, and a memorandum of understanding designed to achieve this was entered into between the Agency and the CHRC. Despite this, the CHRT issued a Decision which dealt with the same complainant and identical issues while arriving at a different decision from one previously made by the Agency. In this case, the jurisdictional overlap resulted in a conflicting outcome.

At the request of the Agency, the Federal Court undertook a judicial review on these jurisdictional issues at the end of 2009-10. In October 2010, the Federal Court overturned the CHRT's Decision, affirming the jurisdiction of the Agency as the principal expert tribunal in all transportation matters, including those related to accessibility.

The Federal Court ruling was appealed by the CHRT. In November 2011, the Federal Court of Appeal (FCA) confirmed the Federal Court ruling to set aside the CHRT's decision, stating that the CHRT could not reconsider a matter already adjudicated by the Agency. However, the FCA did not address the question of whether the Agency has exclusive jurisdiction over disability-related cases involving the federal transportation network.

Assessment: This jurisdictional overlap can lead to the following problems:

→ Complainants face uncertainty as to which body should address their complaints, particularly given the different remedies available under the *Canada Transportation Act* and the *Canadian Human Rights Act*. Although the Agency has the mandate to remove undue obstacles from the federal transportation network, it does not have the powerto award compensation for pain and suffering, unlike the CHRT.
→ Respondents (e.g., carriers, terminal operators) face the possibility that they will have to defend the same issues under two different legislative regimes.
→ To the extent that both the Agency and the CHRC/CHRT deal with the same complaint, there is uncertainty, the possibility of conflicting outcomes from the two tribunals and added costs for the respondent and the Government of Canada.

In order to clarify the jurisdictional responsibilities of the Agency and the CHRC/CHRT, to provide for consistency and comparability with the CHRC/CHRT, and

to avoid claims that the Agency is limited in its ability to provide a resolution that is satisfactory to all parties involved, the *Canada Transportation Act* could be amended to:

- confirm the Agency's exclusive mandate with respect to dealing with complaints by persons with disabilities regarding the accessibility of the federal transportation network;
- provide the Agency with the power to award costs for pain and suffering encountered, a power that the CHRT currently possesses; and
- provide the Agency with the jurisdiction to apply solutions on a wider, systemic basis, also a power that the CHRT currently possesses. Persons with disabilities would thereby be provided with the full range of remedies (see discussion immediately below).

GENERAL

Topic: Clarification of the Agency's two main business functions

Description: The Canadian Transportation Agency is an independent body of the Government of Canada which currently performs two key functions within the federal transportation system.

- As a quasi-judicial tribunal, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.
- As an economic regulator, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction.

In its role as an economic regulator, some of the Agency's decisions—including many pertaining to charter permits or licensing activities—have effectively become routine and involve little or no discretion. The delivery of such routine, non-discretionary regulatory services could be dealt with more effectively by staff.

However, there are no provisions for such a delegation of authority to staff in the Canada Transportation Act.

Currently, the Act:

- Provides limited guidance regarding the role of Members or the Chair/Chief Executive Officer (Chair/CEO);
- Requires Members to make all Agency decisions; and
- Makes no distinction between the adjudicative and regulatory provisions administered by the Agency.

Assessment: In the Agency's opinion, when the Act is next reviewed consideration should be given to clarifying:

- The authority of the Chair/CEO over the administration of economic regulations involving non-discretionary or routine decisions and powers of delegation in that respect; and

→ The two distinct functions of the Agency and the procedural expectations vis-à-vis each function.

These changes would:
→ Allow Members to concentrate on their core role as adjudicators;
→ Help distinguish between the responsibilities carried out by the Agency as an administrative public service organization and those borne by its Members as a tribunal; and
→ Provide for the efficient, effective and timely administration of the routine and regulatory matters within the purview of the Agency.

Topic: 120-day deadline

Description: Subsection 29(1) of the Act states that the Agency will make its decision in any proceeding before it as expeditiously as possible, but no later than 120 days after the originating documents are received, unless the parties involved agree otherwise.

The Agency has set in place high performance standards. With a view to ensuring transparent, fair and efficient dispute resolution and administration of its regulatory responsibilities, in 2007, the Agency implemented a new Performance Measurement Framework based on client and stakeholder feedback and expectations. This framework was amended in late 2010-11 to support the Agency's current three-year Strategic Plan (2011-2014).

Performance measures tailored to the specific requirements of, and based on benchmarks for, different areas of its service delivery have since been implemented and reported on in its Annual Report.

For example, in 2012-13, the Agency exceeded its performance targets related to air licensing and charters by issuing 96% percent of all air licences within 14 days and 97% percent of all charter permits within 30 days. It has also consistently exceeded its performance target requiring that 80% of all marine coasting trade disputes be resolved within 90 days. In fact, even in complex cases, the Agency now targets a resolution within 90 days from the close of pleadings.

As a result, the single 120-day deadline—which was set in 1996—has been replaced in practice by the performance measurement framework the Agency has adopted, and has publicly reported on since 2009-10.

Assessment: The Agency has adopted a series of service-specific, time-related performance measures which are more effective for overall Agency accountability than the single maximum 120-day legislated timeframe for all proceedings before the Agency. In all cases, these measures are based on time-related targets of less than 120 days.

The transportation industry has been informed of these targets and the Agency reports to Parliament and industry on its performance against them. In fact, client satisfaction survey results indicate that 75% of clients and stakeholders are satisfied with the overall service they receive from the Agency.

These performance measures and processes are based on client and stakeholder feedback and expectations, are relevant to the nature of each of the Agency's business

activities, and have been designed to ensure that its services are provided in an efficient, transparent and client service-oriented manner. Performance results are published in the Agency's Annual Report to Parliament and on its Web site for clients and stakeholders.

Such results-focused performance indicators establish benchmarks and determine the level of service delivery the Agency needs to achieve to help maintain an efficient federal transportation system. They allow the Agency to track how closely its objectives are being met and to implement continuous improvements to enable it to meet the accountability expectations of Parliament and Canadians.

Subsection 29(1) of the Act already requires the Agency to act as expeditiously as possible and the Federal Court has previously ruled that the 120-day legislated timeframe is not mandatory. In addition, the Supreme Court of Canada (SCC) has recognized that 120 days is not an appropriate timeline for all cases, stating that:

Where a relatively limited adjudicative investigation is being conducted by the Agency, the Agency will gear its process towards rendering a decision within 120 days. On the other hand, where an adjudicative proceeding is broad in scope and has far-reaching implications, the Agency will have to adjust its process to take account of these conditions. The 120-day period in s. 29 does not preclude it from doing so or cause the Agency to lose jurisdiction if the 120-day period is exceeded.

Accordingly, the Agency recommends that the Act be modified to:

→ Remove this 120-day deadline and that, in its place, the Agency be required to establish service-specific, time-related performance measures, which would continue to be reported on annually in the Agency's Annual Report to Parliament; or, alternatively,
→ Qualify exceptions to the 120-day period where more time may be required, as has been recognized by the SCC.

These proposed changes would contribute to better managing expectations by recognizing that in all instances the Agency aims to issue its decisions in less than 120 days, while acknowledging that this is not possible in certain circumstances.

APPENDIX: STATISTICS

The following statistical tables are available on the Agency's website at cta.gc.ca/eng/statistics

I. Agency Rulings
Total rulings by Members

II. Dispute Resolution
Disputes resolved by the Agency

III. Air Travel Complaints
Air travel complaints – informal facilitation
Air travel complaints in the facilitation process (Canadian carriers)
Air travel complaints in the facilitation process (foreign carriers)
Issues cited in air travel complaints in the facilitation process (all carriers)
Issues cited in air travel complaints in the facilitation process (major Canadian carriers)

IV. Air Licensing and Charters
Air carriers by nationality
Air licences held by nationality
Air licensing activities
Charter permits issued
Charter flight notifications

V. Rail Transportation
Railway infrastructure and construction

VI. Marine Transportation
Coasting trade applications

VII. Enforcement
Enforcement activities